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Crl.A.Nos.191 and 357 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.09.2024
Pronounced on	05.12.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

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Crl.A.No.191 of 2019

Silambarasan

... Appellant/A1

Vs.

State Rep. by
Inspector of Police,
Mettupalayam Police Station
(Crime No.66/2014)
Puducherry.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the conviction and sentence imposed upon him by the learned III Addl. Sessions Judge at Puducherry in S.C. No. 3 of 2015 dated 13.03.2019 for the offences under Section 302 r/w 34 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default sentenced to undergo one year R.I. and convicted under Section 382 r/w of IPC and sentenced to undergo rigorous imprisonment for 10



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years and to pay a fine of Rs.1,000/- in default undergo one year R.I. the sentence shall run concurrently.

Crl.A.No.357 of 2019

Prasath

... Appellant/A2

Vs.

State represented by the Inspector of Police,
Mettupalayam P.S.
Puducherry.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed against the appellant/accused No.2 on 13.03.2019 in S.C.No.3 of 2015 on the file of III Additional Sessions Judge, Puducherry and acquit him from the charges.

For Appellant in
Crl.A.No.191 of 2019 : Mr. V.Gopinath,
Senior Counsel
M/s.Swami Subramanian

For Appellant in
Crl.A.No.357 of 2019 : Mr.R.John Sathyan,
Senior Counsel
for Mr. P.Divakar

For Respondents : Mr.K.S.Mohandoss,
Additional Public Prosecutor
(Puducherry)



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COMMON JUDGMENT

C.KUMARAPPAN, J.

The instant criminal appeals have arisen against the order of conviction passed by the learned III Additional Sessions Judge, Puducherry, in S.C. No. 3 of 2015, dated 13.03.2019.

2. Originally, there were three accused: the appellant in Crl.A.No.191 of 2019, viz., Silambarasan is the first accused, and the appellant in Crl.A.No.357 of 2019, viz., Prasath is the second accused. The third accused, Venkatesh though filed a Criminal Appeal in Crl.A.No.564 of 2019, since he died during pendency of this appeal, the said Criminal Appeal was dismissed as abated, vide order dated 11.09.2024. Both these appeals arise from S.C. No. 3 of 2015 and hence, we deem it appropriate to dispose the two pending appeals together by way of a common judgment.

3. For the sake of convenience, we may refer to the respective appellants according to their the litigative status mentioned before the



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Trial Court.

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4. While flittering the facts, the facts which are necessary for disposal of the appeals are stated herein below:-

(a) It was between 13.30 and 15.30 hours on 06.06.2014, PW1/ Bubesh Anand shocked as his phone call was not attended by his mother [deceased] between 1.30 p.m and 2.00 p.m. Then, he (PW1) rushed to the house to meet his mother [deceased] at 3.30 p.m along with his wife (PW3). But his mother was lying unconscious, with her hands tied, and mouth taped. Hence, PW1 took his mother [deceased] to Kathirgamam Indira Gandhi Hospital, where she was declared dead. While proceeding to the hospital, PW1 also called PW5, a relative, who joined him at the hospital.

(b) Thereafter, both PW1 and PW5 went to Mettupalayam Police Station and gave Ex.P1, the complaint to PW20, S. Balamurugan, who registered an FIR in Crime No. 66 of 2014 at about 17:00 hours on the same day. On receiving the copy of the FIR, (PW23), the Investigating Officer proceeded to Kathirgamam Indira Gandhi Hospital, where the



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deceased's body was kept. There, he made arrangements to take photographs and prepared an observation mahazar and rough sketch, in the presence of Parathasarthi (PW6) and Kuppusamy. As a part of investigation, he recovered the articles lying at the scene of occurrence in the presence of the same witnesses.

(c) After recording statements from PW1/Bubesh Anand, PW3/Ramya, PW2/Suganandhan, and the first accused/Silambarasan, he conducted the inquest on the deceased's body on 07.06.2014. This was carried out in the presence of Sathya Seelan (PW7), Arumugam, Sarangapani, and Andal. Following this, arrangements were made for the post-mortem examination. He also recorded additional statements from PW1/Bubesh Anand, PW2/Suganandhan, PW3/Ramya, PW4/Lakshmi, PW6/Parthasarathy, Rajan, and Kuppusamy. The body was then handed over to the deceased's family on 08.06.2014 and arrangements were made to recover the deceased's dress materials.

(d) On 09.06.2014, he recorded statements from the Doctor C. Dhatchayani, who first attended the deceased, and another witness,



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PW5/Dhanraj Mohan. Based on PW4/Lakshmi's statement, about the presence of the accused at the scene of occurrence at 13.30 hours along with the deceased, he arrested the first accused. During interrogation, the first accused voluntarily gave a confession statement in the presence of Vinothkumar (PW14) and Prakash (PW9).

(e) Through the confession statement, the time of occurrence, nature of commission of offence and the involvement of other two accused, namely the second accused, Prasath, and the third accused, Venkatesh came to light.

(f) The first accused handed over his cell phone and SIM cards, and the same were seized in the presence of witnesses. After recording the statement of the first accused, the Investigating Officer/PW23 sent an alteration report, modifying the charges to Sections 382 and 302 of the IPC, read with Sections 34 and 120(b) of the IPC. Subsequently, the Investigating Officer took the first accused to Kumbakonam, where he identified the second and third accused. Upon identification, both accused were arrested. After the arrest, the second accused voluntarily give



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confession statement, besides a laptop, cell phone, and two SIM cards were also seized from him.

(g) Based upon the second accused confession statement, a discovery of fact was effected by recovering stolen articles, namely the deceased's bangles, from one M/s. Muthalagu Finance. This seizure was effected in the presence of PW9 (Prakash) and PW14 (Vinothkumar). Subsequently, another discovery of fact was made by seizing other stolen articles, qua a gold chain, from one Mr.Suresh. Besides, the Investigating Officer also recovered a Samsung mobile phone, gold chain, and other gold ornaments, from the third accused's house on 16.06.2014. These recoveries were made in the presence of the same witnesses, PW9 (Prakash) and PW14 (Vinothkumar). Afterwards, PW1/Bubesh Anand, and PW2/Suganandhan identified their ownership over the articles. Thereafter, the seized stolen articles were forwarded to the concerned Judicial Magistrate.

(h) On 15.06.2014, the Investigating Officer recorded the statement from Mr.Suresh, who received stolen articles from the second accused. He



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further recorded the statements from PW9 and PW13 on 18.06.2014. On 23.06.2014, he recorded the statement of Dr. R. Balaraman (PW15), who conducted post-mortem. On 14.07.2014, he recorded a statement from Dr. Upadaya (PW13), who conducted the viscera tests to rule out the possibility of poisoning. Subsequently, he obtained call details of the first and second accused from Airtel Nodal Officer Johnson (PW21), and recorded his statement. He also recorded the statement of one Balaji regarding the call details of the first and second accused. Additionally, he registered an FIR against PW8/Suresh for knowingly receiving stolen articles under Section 411 of IPC. Thus, after completing the investigation, he laid the charge sheet against all the three accused.

5. Before the Trial Court, the prosecution relied on as many as 23 witnesses, and marked 44 documents. Besides, the prosecution also marked 47 material objects. On behalf of the defence, ten documents were marked as Ex.D1 to Ex.D10. However, neither witnesses were examined, nor material objects were marked on behalf of the accused.

6. The Trial Court, after considering the oral and documentary



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evidences, as well as the material objects, found that the prosecution had proved the charges against the accused, beyond reasonable doubts. Ultimately, all the accused were convicted and sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000 each, in default to undergo one year rigorous imprisonment for the offence under Sections 302 read with 34 of IPC. Additionally, they were also convicted and sentenced to undergo rigorous imprisonment, for 10 years and to pay a fine of Rs. 1,000 each, in default to undergo one year rigorous imprisonment for the offence under Section 382 read with 34 of IPC. Aggrieved by this order, the appellants/accused 1 & 2 have now approached this Court.

7. Assailing the said order, Mr. V.Gopinath, learned Senior Counsel appearing on behalf of the first accused, would vehemently contend that there was no recovery from the first accused. He further contended that the first accused had only helped PW1 to admit the deceased in the hospital. According to him, the circumstances against the first accused are "last seen theory" spoken by PW4, and the recoveries made from the other accused, namely A2 and A3. The learned Senior Counsel further contended that the trial Court wrongly relied on the call detail records, without the mandatory



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Section 65-B certificate under the Indian Evidence Act, 1872 (hereinafter referred to as 'the Act' for short), and proceeded, as if the call detail record is one of the incriminating circumstances against the accused and ultimately, an order of conviction was passed against the accused erroneously. The learned Senior Counsel also contended that the alleged recovery is doubtful due to inherent improbabilities and contradictions between the recovery witnesses and mahazar witnesses and there was also a dispute regarding the date of arrest, as the Investigating Officer (PW23) stated that A2 and A3 were arrested on 16.03.2014, which contradicts the prosecution's claim of arrest and recording of their confession statements prior to arrest qua 13.06.2014 and hence, prayed for an acquittal.

8. Continuing further, Mr. John Sathyan, learned Senior Counsel appearing for the second accused, contended that Ex.P1 (complaint) does not contain the description and design of the jewels, which makes the identification done by PW1 and PW2 doubtful. It is the further contention of the learned Senior Counsel for the second accused that the evidence of PW11 and Ex.P14 (Pawn ticket) would demonstrate the falsity over the case, as the Pawn ticket did not contain the address receipt number and



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Licence number. The trial Court failed to consider the absence of the accused's fingerprints at the scene of occurrence. It was further contended that the evidence of PW8/Suresh fortifies the fact that there was no recovery made from him, as stated by the prosecution.

9. The contention of both the learned Senior Counsels are that, there are numerous reasonable doubts in the prosecution's case. Whereas, the trial Court, relying upon the overruled judgment of the Hon'ble Supreme Court of India in *Sonu Alias Amar vs. State of Haryana*, reported in **(2017) 8 SCC 570**, has connected both the first and second accused to the occurrence through call detail records, which are contrary to law, and that the mere presence of the first accused at the scene of occurrence cannot be an incriminating circumstance, as he was otherwise a tenant in the said premises. Further, the recovery is concocted and the evidence of recovery witnesses are unbelievable. Hence, they prayed for allowing both these Criminal Appeals.

10. Per contra, the learned Additional Public Prosecutor vehemently contended that the judgment of the Hon'ble Supreme Court of India in



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Sonu Alias Amar's case (cited supra) is applicable to the present case, as the accused did not raise any objection, at the time of marking of the call details. Whereas through these call details, the prosecution has demonstrated connection and conversation between A1 and A2 through Ex.P27 and P28. Furthermore, PW4 consistently spoke about the first accused's presence at the scene of occurrence during the relevant time. Additionally, all the recovery witnesses categorically stated that they discovered and recovered jewels and other relevant materials. The learned Additional Public Prosecutor further contended that the recovered jewels and other materials, alleged to have been stolen from the deceased's house, were subsequently identified by PW1 and PW2 and therefore, the learned Additional Public Prosecutor contended that there are no grounds to interfere with the order of the learned Trial Judge, as the prosecution has proved the charges beyond reasonable doubt. Hence, he prayed to dismiss the instant Criminal Appeals.

11. We have given our anxious consideration to the submissions made on either side.



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12. Before we delve on the rival submissions, it is appropriate to discuss the legal principles touching upon this case. The Hon'ble Supreme Court in the case of ***Shailendra Rajdev Pasvan and others Vs.State of Gujarat and Others*** reported in ***(2020) 14 SCC 750***, held that in a case relating to circumstantial evidence, law needs two fold requirements, i) Every link in the chain of the circumstances has to be established, and ii) All the circumstances must be consistent pointing only towards the guilt of the accused. For ready reference, we deem it appropriate to extract paragraphs 13, 14, 15 and 17 of ***Shailendra Rajdev Pasvan*** (cited supra) case, which read as follows:

“13. Thus, the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates twofold requirements:-

(i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.

(ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

14. This court in the case of Trimukh Maroti Kirkan v. State of Maharashtra has enunciated the aforesaid principle as under:-

“12.....The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances



should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence”.

15. Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person. In the case of *Bodhraj v. State of J & K*, *Rambraksh v. State of Chhattisgarh*, *Anjan Kumar Sharma v. State of Assam* following principle of law, in this regard, has been enunciated: (*Shailendra Rajdev Pasvan Case*, SCC OnLine Guj para 16)-

“16.....The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the Accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that Accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases”.

17. It is well settled by now that in a case based on circumstantial evidence the Courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to



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form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused."

13. In yet another judgment in ***Raja Naykar Vs. State of Chhattisgarh*** reported in **(2024) 3 SCC 481**, Hon'ble Supreme Court has held that in the case of circumstantial evidence any discovery of fact in a place accessible to all, and general in common place, become doubtful. The relevant paragraph 31 reads as follows:

"31. Insofar as the finding of the High Court that the appellant has failed to give any explanation in his statement under Section 313 Cr. P.C. is concerned, we find that the High Court has failed to appreciate the basic principle that it is only after the prosecution discharges its duty of proving the case beyond all reasonable doubt that the false explanation or non-explanation of the accused could be taken into consideration. In any case, as held by this Court in the case of Sharad Birdhichand Sarda in a case based on circumstantial evidence, the nonexplanation or false explanation of the accused under Section 313 Cr.P.C. cannot be used as an additional link to complete the chain of circumstances. It can only be used to fortify the conclusion of guilt already arrived at on the basis of other proven circumstances."

(Emphasis supplied by this Court)

14. In the case of ***Pardeep Kumar Vs. State of Haryana*** reported in



(2024) 3 SCC 324, the Hon'ble Supreme Court relied on the oft-quoted judgment of Hon'ble Supreme Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra*** reported in (1984) 4 SCC 116. In ***Sharad Birdhichand Sarda*** case (cited supra), and dealt about the Panchsheel principle in paragraph 153 and 154 of the judgement. The same read as follows:

"153. A close analysis of this decision would show that 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 this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra(1973) 2 SCC 793 : 1973 SCC (Crl) 1033 where the following observations were made (SCCp.807, para 19):

"19.....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.*

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence (Sharad Birdhichand Sarda v. State of Maharashtra, SCC p.185, paras 153-54)"

Therefore, in the case of circumstantial evidence, all the circumstances has to be proved without there being any missing link, and that the alleged false explanation and non explanation of the accused could be taken into consideration, only after all the circumstances are proved beyond reasonable doubt.

15. Now, let us proceed to consider the contention of both the learned Senior Counsels, in the light of the above legal principles. According to the prosecution, the incriminating circumstances are (i) "last seen theory", (ii) the recovery of stolen articles at the instance of the accused. Apart from that, the prosecution has also relied on the circumstances of telephone conversation between the accused, just prior to the occurrence and that, they attempted to establish such nexus through call



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details records [CDR] of their cell phone.

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16. Before we proceed to examine the first two circumstances, namely the "last seen theory" and recovery of stolen articles, let us consider the prosecution's attempt to prove the nexus between A1 and A2 through the call details, record qua, Ex.P27 and Ex.P28. The learned Trial Judge, relying upon the judgment of the Hon'ble Supreme Court of India in ***Sonu Alias Amar's*** case (cited supra), held that while marking these call details, since the accused did not object to its admissibility, they are prohibited from questioning the admissibility of the CDR. Hence, the trial Court held that, by virtue of those call details, the nexus between A1 and A2 has been established.

17. However, this contention was strongly objected to by both the learned Senior Counsel, by relying upon the judgment of the Hon'ble Full Bench of the Supreme Court of India in ***Arjun Panditrao Khotkar vs. Kailash Kushanraw Gorantyal***, reported in (2020) 7 SCC 1. It is pertinent to mention here that in ***Arjun Panditrao Khotkar's*** case (cited supra), the



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Hon'ble Supreme Court of India, in paragraph 73, clarified that the judgment in **Anvar P.V vs. P.K.Basheer**, reported in **(2014) 10 SCC 473**, is a binding precedent on Section 65-B of the Act. According to the judgment of **Anvar P.V's** case (cited supra), the certificate under Section 65-B, Sub-clause (4) of the Act is a mandatory pre-requisite to rely on the electronic records. However, in **Sonu Alias Amar's** case (cited supra), this Court referred to **Anvar P.V's** case (cited supra) in paragraph 25 and reaffirmed the said position in paragraph 29 of the judgment. Nevertheless, it was held that, during trial, when there was no objection to mark the electronic document, then the objection regarding the admissibility of electronic evidence could not be raised during the appellate stage.

18. For ready reference, it is relevant to extract the relevant paragraph of the judgment of **Sonu Alias Amar's** case (cited supra), which reads as follows:-

“29. That an electronic record is not admissible unless it is accompanied by a certificate as contemplated under Section 65-B(4) of the Evidence Act is no more res integra. The question that falls for our consideration in this case is the permissibility of an objection regarding inadmissibility at this stage. Admittedly, no objection was taken when the CDRs were



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adduced in evidence before the trial court. It does not appear from the record that any such objection was taken even at the appellate stage before the High Court. In Gopal Das v. Thakurji [Gopal Das v. Thakurji, 1943 SCC OnLine PC 2 : AIR 1943 PC 83] , it was held that: (SCC OnLine PC)

“... Where the objection to be taken is not that the document is in itself inadmissible but that the mode of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. A party cannot lie by until the case comes before a Court of Appeal and then complain for the first time of the mode of proof.”

30. In R.V.E. Venkatachala Gounder [R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752] , this Court held as follows: (SCC p. 764, para 20)

“20. ... Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is [Ed.: The matter between two asterisks has been emphasised in original.] itself inadmissible [Ed.: The matter between two asterisks has been emphasised in original.] in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the [Ed.: The matter between two asterisks has been emphasised in original.] mode of proof [Ed.: The matter between two asterisks has been emphasised in original.] alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and



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marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior court.”

(emphasis supplied)

31. It would be relevant to refer to another case decided by this Court in P.C. Purushothama Reddiar v. S. Perumal [P.C. Purushothama Reddiar v. S. Perumal, (1972) 1 SCC 9] . The earlier cases referred to are civil cases while this case pertains to



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police reports being admitted in evidence without objection during the trial. This Court did not permit such an objection to be taken at the appellate stage by holding that: (SCC p. 15, para 19)

“19. Before leaving this case it is necessary to refer to one of the contentions taken by Mr Ramamurthi, learned counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head Constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility.”

Ultimately, it was ratiocinated that, Call Detail Records (CDRs) are not inadmissible evidence, unlike statements under Section 161 of the Cr.P.C., when no objection was raised by the parties, during trial. In that context, in ***Sonu Alias Amar's*** case (cited supra), the CDR were relied even without a Section 65-B certificate.

19. However, in subsequent decision, held in ***Arjun Panditrao Khotkar's*** case (cited supra), the Hon'ble Supreme Court of India has categorically held that the judgment rendered in ***Anvar P.V's*** case (cited supra) is a binding precedent, and the position of law was clarified that for reliance of electronic evidence, Section 65-B certificate is condition precedent. It was further held that, in the place of Full Bench judgement in



Anvar P.V's case (cited supra), a Smaller Bench cannot deviate the larger bench decision.

20. In this regard, it is relevant to refer to the subsequent judgment of the Hon'ble Full Bench of the Supreme Court of India in **Sundar @ Sundarrajan vs. State by Inspector of Police**, reported in **2023 SCC Online SC 310**. The Hon'ble Supreme Court of India, after referring to the judgments of **Sonu Alias Amar's** case (cited supra), **Anvar P.V's** case (cited supra), and **Arjun Panditrao Khotkar's** case (cited supra), ultimately held in paragraphs 45, 46, and 47, which reads as follows:-

“45. Most recently, in Mohd. Arif v. State (NCT of Delhi) [15](#), a three judge Bench of this Court while deciding a review petition in a case involving the review of a death penalty faced a similar fact situation where the decisions of the trial court and appellate courts were rendered during the period when Navjot Sandhu was the prevailing law. In that case as well, the Court took note of it being a matter involving a death sentence and held that:

“24. Navjot Sandhu was decided on 4.8.2005 i.e., before the judgment was rendered by the Trial Court in the instant matter. The subsequent judgments of the High Court and this Court were passed on 13.9.2007 and 10.8.2011 respectively affirming the award of death sentence. These two judgments were delivered prior to the decision of this Court in Anvar P.V. which was given on 18.9.2014. The judgments by the trial Court, High Court and this Court were thus well before



the decision in Anvar P.V. and were essentially in the backdrop of law laid down in Navjot Sandhu. If we go by the principle accepted in paragraph 32 of the decision in Sonu alias Amar, the matter may stand on a completely different footing. It is for this reason that reliance has been placed on certain decisions of this Court to submit that the matter need not be reopened on issues which were dealt with in accordance with the law then prevailing. However, since the instant matter pertains to award of death sentence, this review petition must be considered in light of the decisions made by this Court in Anvar P.V. and Arjun Panditrao.

25. Consequently, we must eschew, for the present purposes, the electronic evidence in the form of CDRs which was without any appropriate certificate under Section 65-B(4) of the Evidence Act.”

46. Accordingly, we too deem it appropriate to consider this review petition by eschewing the electronic evidence in the form of CDRs as they are without the appropriate certificate under Section 65B even if the law, as it was during the time the trial in the present case was conducted, allowed for such electronic evidence to be admitted.

47. Accordingly, we analyse the evidence considered by the High Court and this Court in appeal without relying upon the CDRs. The High Court took note of the following evidence in its judgment before arriving at the conclusion of the guilt of the petitioner and confirming his conviction:....”

(emphasis supplied by this Court)

21. In **Sundar @ Sundarrajan's** case (cited supra) coequal Bench of the Hon'ble Supreme Court of India, subsequent to **Arjun Panditrao**



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Khotkar's case (cited supra), has categorically held that, the electronic evidence without a 65-B certificate, cannot be relied upon and reaffirmed and reiterated that a Section 65-B certificate is a mandatory pre-requisite for the admissibility of digital evidence. In view of this settled legal position, the reliance of the Call Detail Records (CDRs) Ex.P27 and Ex.P28, cannot be held to be legal. Consequently, one of the circumstances relied upon by the prosecution, based upon the CDRs, loses its significance and vanished in the light of the above detailed discussions.

22. Now, naturally a doubt arise, when one of the circumstance relied by the prosecution, is not proved, then what could be the effect of the other circumstances. The fundamental principles in a case arising out of a circumstantial evidence is, whether the circumstances relied by the prosecution forms a complete chain and unerringly pointing towards the guilt of the accused by excluding all other hypothesis. In such scenario, it becomes primordial duty of this Court to find out whether the other incriminating circumstances on its proof, form a complete chain, pointing towards accused, without any other hypothesis?



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23. The remaining incriminating circumstances are the "last seen theory" and the recovery of stolen jewelry and other articles, at the instance of the accused. In respect of the "last seen theory," the prosecution relies upon the evidence of servant maid (PW4). She had categorically stated that on the fateful day at about 1:30 p.m, there was a confabulation between the deceased and the first accused in front of the deceased's house. More pertinently, when the first accused was confronted under Section 313 of the Cr.P.C. regarding this material incriminating circumstances, he replied to question No. 14 as follows:-

“Question No.14....

பதில்:- நான் தெரு வாசலில் நின்று கொண்டு அன்று வாடகை கொடுக்க வந்தேன். வாடகை கொடுத்து விட்டேன்.”

24. Therefore, it becomes an admitted fact that on 06.06.2014, at about 1:30 hours, the deceased interacted with the accused. If one reads this portion of the first accused's reply during Section 313 of the Cr.P.C. in the background of PW1's evidence, naturally, suspicion would surface against the first accused. According to PW1, when he called his mother between 1:30 and 2:00 hours, his mother did not pick up the phone. Upon



arriving at the scene of occurrence at 03:30 hours, he found his mother lying unconscious, and the jewels worn by her were missing, along with a cell phone and a mini laptop. The time of PW1's call to his deceased mother, and his immediate presence at about 3:30 hours at the scene of occurrence, is not disputed by the accused. More pertinently, only upon the confession of the first accused (A1), the prosecution had established the discovery of facts regarding the involvement of the other two accused, viz., A2 and A3. Hence, we are of the firm view that the prosecution has established the "last seen" theory between the first accused and the deceased.

25. The incidental proposition that may emerge is, since the first accused was a tenant, his presence at the scene of occurrence could not be an incriminating circumstances. But this circumstance of last seen theory as rightly urged, could not be an incriminating circumstances on it's first blush. But unfurling of subsequent discovery of fact about the involvement of other two accused and recovery of stolen articles at the instance of the accused, subject to it's proof, would definitely metamorph the first accused's presence to become an incriminating circumstance. To put it



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differently, if the prosecution establishes recovery of stolen articles at the instances of the second and third accused, then the information provided by the first accused assumes much significance, as the prosecution could unfurl the macabre turn of events from the first accused's statement. It is in this background, the information provided by the first accused would constitute an incriminating circumstance against him. No doubt, before relying on this discovery, the prosecution has to prove the statement made by the first accused and the consequential recovery at the instance of other two accused, qua A2 and A3.

26. The admissible portion of the first accused, qua the discovery part of confession statement, was marked as ExP18. To prove the same, PW9, [Prakash] and PW14, [Vinothkumar] were examined. From their statement, let us first consider as to whether the recording of the first accused's confession statement was proved. A wholesome reading of PW9 & PW14 evidences, inspires the confidence of this Court, and the defence could not bring out any inherent improbabilities or other facts to discredit their evidence. Though PW14 states that the confession statement was recorded on 26.06.2014, ExP18 had reached Court on 14.06.2014. In such



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a view of the fact, a mere reference of 26.06.2014, as the date for recording confession statement of ExP18, will in no way dent the prosecution's case.

27. In order to prove the recovery, the prosecution heavily relies on PW9 and PW14. PW9, Prakash, during his chief examination, stated that in his presence and in the presence of PW14, Vinothkumar, the second accused Prasad gave confession statement at Kumbakonam. No doubt, PW14, Vinothkumar did not speak about the confession statement given by the second accused/Prasad. But PW14's silence as to the second accused's confession and it's consequential recovery would in no way favour the accused, as admittedly, there is not even a suggestion from the second accused to deny the Ex.P39, qua the admissible portion of the confession statement. During chief examination, PW9 categorically speaks about the proclivity of recovery and it's mahazar. In this background, a stray reference that he could not refer the name of the place and details of article, would be insignificant and hence would not dent the prosecution's case. As a matter of fact, ExP39 statement reached the Court on 14.06.2014, which is on the next day of 2nd accused's arrest.



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28. PW9 speaks about the recovery of two bangles from one M/s.Muthalagu Finance. The Manager of M/s.Muthalagu Finance, namely Mr.Mohanraj, was examined as PW11. His statement corroborates PW9's evidence. However, this recovery was stoutly objected by the second accused on the ground that the said Mohanraj's name does not find place in Ex.P14, the pawn receipt, and that the pawn receipt does not contain the address, as well as its serial number and the pawn broker's license number.

29. It is in this background, learned Senior Counsel for the second accused contended that, Ex.P14 [pawn ticket] is a fabricated document for the purpose of this case. However, while looking at Ex.P9, seizure mahazar of two bangles, it is evident that these two bangles were evidently recovered from M/s.Muthalagu Finance through Ex.P9, mahazar, which reached the Court on 17.06.2014 itself. However, the Ex.P14, the pawn receipt, were seized through Ex.P24 on 05.08.2014 and reached Court on 11.09.2014, The main objection to the credibility of this document is that there is no reference of PW11 [Mohanraj] name in Ex.P14, Pawn receipt. But even prior to recovery of Pawn receipt, while seizing the two bangles



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through Ex.P9, Mahazar, the name of PW11 (Mohanraj) found place. Further, during cross examination except the dispute to the pawn ticket, there is absolutely no challenge to the recovery of the two bangles, at the instance of the second accused. Further, on 13.06.2014, the third accused handed over a gold chain weighing 16 grams, a Thanga Thaali Pottu weighing 5 grams, a Samsung cell phone, and a memory card seized under Ex.P12.

30. Coming to Ex.P14, the pawn receipt, and Ex.P9, the seizure mahazar, regarding the recovery of two bangles, though claimed that the second accused did not pledge the said bangles and that Ex.P14, the pawn receipt, is a fabricated one and questioned the credibility of PW11, Mohanraj, qua the Manager of the Pawn Broker's Shop, fortunately, while replying under Section 313 of the Cr.P.C., the second accused admitted to pledging the two bangles with PW11. However, he claimed that they belonged to his wife. The relevant reply is found in question No. 21 as follows:-

“Question No.21....

பதில்:- நான் அடகு வைத்தேன். அந்த நகை என்னுடைய மனைவியின்



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நகை. நான் வழக்கமாக அங்கு தான் அடகு வைப்பேன்.”

But no such defence was taken during cross examination of PW11 and hence, his explanation appears to be an after thought. Here, it was initially objected that there is no nexus between Ex.P14 and no acquaintance with PW11, the Finance Manager. However, during the reply under Section 313 of the Cr.P.C., the second accused admitted to ownership of the recovered bangles. But through PW1 and PW2, the identity of the stolen articles were established. During cross examination of PW2, his identification of Ex.P2 jewels were not at all challenged. Further, the second accused silence to claim ownership of bangles, until 313 Cr.P.C question, is also a incriminating circumstances in favour of the prosecution.

31. Another recovery was effected from PW8, Suresh. According to the prosecution, the gold chain was sold to him, but PW8/Suresh did not admit to the purchase of the stolen property. He stated that, although the gold chain was recovered through Ex.P10, the same is a new chain and was not purchased from the second accused. However, this aspect was disbelieved by the Trial Court, as there was an FIR against PW8 in Ex.P40 dated 16.06.2014. Therefore, the denial by PW8 regarding the purchase of



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the gold chain from the second accused cannot be considered a serious ground to doubt the prosecution's case. Further, the Trial Court has also held that the explanation given by PW8 regarding the seizure of MO6/Chain is illogical. Therefore, the findings rendered by the Trial Court regarding the false statement made by PW8 before the Court, and the reason for such statement, are logical. Consequently, the Trial Court's decision in ignoring PW8's statement, is well-merited.

32. As already stated, the findings rendered by the Trial Court regarding the recovery of MO4/Bangles, MO5/Thaali chain, MO6/Chain, and another jewel (MO7) were duly identified by PW1 and PW2. Even MO8 [cellphone] and MO9 [laptop] were identified by them. However, this identification was disputed by the accused on the ground that, at the time of giving Ex.P1/complaint, there was no reference to the designs and models, and that those jewels and articles do not belong to them. However, in contrast, PW1's statement was further corroborated by PW2 through photographs, namely Ex.P2, P4, and P5. Moreover, this portion of PW2's evidence as already stated, remains unchallenged.



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33. It is through these circumstances, we are of the firm view that the identification of the deceased's jewels and property stolen from the deceased's house was duly identified by PW1 and PW2. Hence, once this Court arrives at a conclusion that the property recovered at the instance of the second accused belongs to the deceased, it is necessary for the accused to explain as to how he was in possession of the deceased's articles. However, the second accused, at the fag end of the trial, claims that the bangles [MO4] belong to him. While looking into his defence during the cross-examination of PW1, PW2 and PW11, it is revealed that no ownership was claimed over the recovered bangles. As such, his claim of ownership, during 313 Cr.P.C questioning, would definitely be a dichotomy, rendering the second accused's explanation as false. This false explanation would certainly be an additional circumstance against the second accused. As already stated, the involvement of the second accused was discovered only through the statement of the first accused, besides against the first accused's last seen theory was also proved and admitted by him.

34. Before we close the curtain, we would like to recapitulate our



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findings here that though it is the case of the accused that they were innocent, the prosecution had proved the recovery of the deceased's articles at the instances of the first and second accused, beyond reasonable doubt. The identity of the deceased's articles were also proved beyond reasonable doubt through her son and husband qua PW1 and PW2. In such circumstances, there is a duty cast upon the accused to explain as to how the deceased's articles came to their custody, as required under Section 106 of the Evidence Act, which factum the accused failed to explain. Further, their false explanation as to the ownership of two bangles [MO4] would fortify and reinforce the above incriminating circumstances. Thus, all these above circumstances, unerringly points to the guilt of the accused, by excluding all other hypothesis.

35. It is in this background, we are of the firm view that the prosecution has established the incriminating circumstances of the "last seen theory" against the first accused, and the involvement of both the first and second accused through the recovery of the deceased's jewels and other materials at their instance. The false explanation of claiming ownership over stolen articles qua bangles and his non explanation as to how they



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were in possession of those articles, also become incriminating circumstances against the accused.

36. Accordingly, we are of the firm view that the prosecution has established all the charges and incriminating circumstances against the accused beyond all reasonable doubt. We are also do not find any grounds to interfere with the well merited findings of the trial Court.

37. In the result, both the Criminal Appeals are stand dismissed.

[M.S.R., J.] [C.K., J.]
05.12.2024

Index: Yes/No
Speaking order /Non Speaking Order
Neutral Citation: Yes/No
kv

To

1. The III Additional Sessions Judge, Puducherry.
2. The Inspector of Police,



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WEB COPY Mettupalayam Police Station
Puducherry.

3. The Public Prosecutor,
High Court of Madras.