

Kubendran Vs. The State represented by the Inspector of Police, Theni District

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Court : Chennai Madurai

Decided On : Oct-27-2015

Judge : S. Nagamuthu & V.S. Ravi

Appeal No. : Crl.A(MD)No. 278 of 2012

Appellant : Kubendran

Respondent : The State represented by the Inspector of Police, Theni District

Judgement :

(Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. praying this Court, to set aside the Judgment delivered in S.C.No.109 of 2010 dated 24.07.2012 on the file of the learned Additional District and Sessions Judge, Theni at Periyakulam and acquit the appellant and thus render justice.)

V.S. Ravi, J.

The appellant is the sole accused in S.C.No.109 of 2010 (Crime No.369 of 2010) on the file of the learned Additional District and Sessions Judge, Theni at Periyakulam. The appellant has been charged for the offences under Sections 302 and 404 I.P.C. The trial Court, by Judgment dated 24 07.2012, convicted him for the offence under Section 302 I.P.C and sentenced him to undergo Life

Imprisonment and also imposed fine of Rs.1,000/- and, in default, to undergo Rigorous Imprisonment for three months and also, convicted him for the offence under Section 404 I.P.C and sentenced him to undergo Rigorous Imprisonment for one year and also imposed fine of Rs.500/- and, in default, to undergo Rigorous Imprisonment for one month. Challenging the conviction Judgment delivered in S.C.No.109 of 2010, the appellant/accused in Crime No.369 of 2010 is before this Court with this present appeal and he has been enlarged on bail as per the order dated 21.01.2013 passed by this Court.

2. The brief case of the prosecution is as follows;

P.W.1 Jeyalakshmi has four daughters and one son and deceased Manonmani is the fourth daughter and the Saminathan(P.W.8) is the husband of the deceased and the deceased has one son, namely, Ashok Kumar(P.W.6), aged 16 years and the appellant is the friend of the said Ashok Kumar and after three years from the date of her marriage, she used to live separately with her son, and her husband has gone to Kerala for doing work, and thereafter, the deceased has run a Beauty Parlour in the house of the P.W.1. The deceased's husband used to give money, to maintain her family, and on 05.05.2010 at 16 hours, the deceased and the appellant have gone to Kerala, to get money from her husband and also, met him and at that time, the husband of the deceased has beaten the deceased and the appellant and scolded the deceased for coming to him with the appellant and they have returned to Uthamapalayam and knocked the door of the P.W.1's house on 06.05.2010 at 1.30 hours and the mother of the deceased(P.W.1) has also scolded them and not admitted them into the house. Hence, the deceased has tortured the appellant to take her to the house of the appellant and due to all incidents, the appellant has the motive to kill the deceased and on the same day, the accused has pulled down the deceased and knocked her head on the floor on two times and due to the injuries, the deceased has died and the appellant has taken her sovereigns of ear stud from her ear. Hence, according to the prosecution, the appellant / accused in Crime No.369 of 2010, is liable to be punished under Sections 302 and 404 I.P.C.

2.1. In order to prove the case of the prosecution, the prosecution has examined 23 witnesses as P.W.1 to P.W.23 and also marked 11 exhibits as Ex.P.1 to Ex.P.11 and also Material Objects as M.O.1 to M.O.12.

2.2. P.W.1 Jeyalakshmi has stated that she knows the accused and the deceased Manonmani is her fourth daughter and the name of the husband of the Manonmani is Saminathan and they have got one son by named Ashok Kumar, aged 16 years. The deceased Manonmani has gone along with the accused to Eratrupettai at Kerala on 05.05.2010 to meet the husband of the deceased Manonmani, namely, P.W.8 Saminathan and on 06.05.2010, both the deceased and the accused have come to her house at the mid night and the P.W.1 has scolded them and send them, without allowing the deceased Manonmani to come inside of her house. Thereafter, on the next day, after the message received from her grand son, on 07.05.2010, afternoon, at 3.00 p.m., she has seen the dead body of the deceased, nearer to the Bank at Uthamapalayam and thereafter, she has lodged the complaint as per Ex.P.1 to the police and the P.W.2 Kumudha, namely, her grand daughter has written the said complaint and also she has identified the sovereign of the deceased ear stud as M.O.1. Further, the P.W.2 Kumudha has stated that the P.W.1 is her grand mother and the deceased Manonmani has gone to Kerala, after informing all the persons in the house and returned back in the mid night on 06.05.2010 along with the accused and the P.W.1 has scolded them and send them back and she has written the Ex.P.1 complaint, as per the dictation given by the P.W.1 and the P.W.1 has lodged the said complaint to the police.

2.3. Further, the P.W.3 Kesavan has stated that the P.W.1 is his grand mother and he has seen the dead body of the deceased Manonmani near M.D.C.C. Bank, at Uthamapalayam on 07.05.2010 and thereafter, he has informed about the death of the deceased to his grandmother. Further, the P.W.4 Mahalakshmi has stated that the P.W.1 is her mother and the deceased is her sister and on 05.05.2010, the deceased has gone to meet her husband, along with the accused to Kerala and they have returned back in the mid night on 06.05.2010 and the P.W.1 has scolded them and send them back. Further, the P.W.6 Ashok Kumar has stated that the deceased Manonmani is his mother and on 05.05.2010, the deceased has gone to meet his father, working at Eratrupettai, at Kerala and the deceased has

gone along with the accused also and on 07.05.2010, he has seen the dead body of the deceased mother near M.D.C.C Bank, Uthamapalayam and the P.W.1 and P.W.2 have gone to the police station, for lodging the Ex.P.1 complaint. Further, the P.W.7 Azhagumalai has stated that he is the relative of the deceased and he has seen the dead body of the deceased Manonmani near M.D.C.C. Bank, Uthamapalayam on 07.05.2010.

2.4. Further, the P.W.8 Saminathan has stated that he is husband of the deceased Manonmani and he is working at Eratrupettai, at Kerala and the P.W.8 and the deceased have got one son, namely, P.W.6 Ashok Kumar and they have lived as husband and wife for three years only and thereafter, they have lived separately for the past seven years and however, he has used to give money for the monthly expenses to the deceased and on 06.05.2010, the deceased have come to Eratrupettai along with the accused and hence, he has scolded them and thereafter, on 07.05.2010, he has heard the death of his wife, namely, the deceased Manonmani and he came to Uthamapalayam and the seen the dead body of the deceased. Further, the P.W.11 Maniraja has stated that the deceased is his relative and he and one Nanildeva have signed in the Observation Magazar and Rough Sketch as per Ex.P.2 and Ex.P.10 and also they have signed in the Athatchi of Ex.P.3, for the recovery of M.O.2 to M.O.5.

2.5. Further, the P.W.12 Ganesan has stated that he is working as Village Assistant and he and the P.W.15 Thiru.Deivendran, Village Administrative Officer have signed in the admissible portion of the confession statement of Ex.P.4 and also they have signed in the Athatchi as per Ex.P.5, for the recovery of M.O.1 sovereigns of Gold stud and also, M.O.6 and M.O.7, namely, the dresses of the accused. Further, the P.W.13 Babu has stated that as per the direction of the police, he has taken photos of the dead body of the deceased. Further, the P.W.14 Thiru.Manoharan, Thasildar has stated that the P.W.15 Village Administrative Officer and the Village Assistant and also the P.W.14 have signed in the said confession statement and he has issued the certificate as per Ex.P.6. Further, the P.W.15 Thiru.Deivendran, Village Administrative Officer has stated that he and the P.W.12 Ganesan have signed in the admissible portion of the confession statement as per Ex.P.4 and also they have signed in the Athatchi as per Ex.P.5,

for the recovery of M.O.1 ear stud, M.O.8 (series) bus tickets 2 Nos., and M.O.6 and M.O.7, namely, the dresses of the accused. Further, P.W.5, P.W.9 and P.W.10 have been treated as hostile witnesses, as they have not supported the case of the prosecution.

2.6. Further, the P.W.16 Thiru.Manikandan, Police Constable(Grade-I) has stated that he has handed over the dead body of the deceased Manonmani to the relatives, after the completion of the Postmortem and also he has handed over the M.O.Nos.9 to 12, namely, the dresses of the deceased to the Inspector of Police. Further, the P.W.17 Viswanathan has stated that he has served as conductor in Dindigul Tamil Nadu State Transport Corporation and he cannot specifically say, regarding the details of the M.O.8(series) tickets issued to various passengers on 06.05.2010 and he is unable to say as to whether the M.O.8(series) tickets 2 Nos. have been issued by himself. Further, the P.W.18 Tmt.Jothi, has stated that on 19.04.2010 she has worked as Sub Inspector of Police at All Women Police Station, Uthamapalayam and on 19.04.2010, one Soniya, wife of accused Kubendran has lodged the complaint and she has registered the case in Crime No.97/10 and she has instructed the accused and his wife to live together peacefully. Further, the P.W.19 Thiru.Ibreem, Head Constable has stated that he has received the Ex.P.7 F.I.R on 07.05.2010 and submitted to the learned Judicial Magistrate, Bodinayakanur at 21 hours on the same day.

2.7. Further, the P.W.20 Thiru.Selvaraj has stated that on 07.05.2010, he has worked as Sub Inspector of Police, Uthamapalayam and he has received the Ex.P.1 complaint from the P.W.1 and registered a case in Crime No.369 of 2010 under Section 302 I.P.C., and prepared the F.I.R as per Ex.P.7 and submitted the said F.I.R to the learned Judicial Magistrate, Bodinayakanur. Further, the P.W.21 Thiru.Udhayakumar, Head Clerk of Judicial Magistrate Court, Uthamapalayam has stated that on 11.06.2010, he has received the Material Objects from the police. Further, the P.W.22 Dr.Juliana Jeyanthi has stated that on 08.05.2010, she has conducted Postmortem on the dead body of the deceased Manonmani and she has issued Postmortem Certificate as per Ex.P.8. Further, the P.W.23 Thiru.Seemaisamy has stated that on 07.05.2010, he has worked as Inspector of Police, Uthamapalayam and he has received the Ex.P.7, F.I.R in the present case

and he has prepared Observation Magazar and Rough Sketch as per Ex.P.2 and Ex.P.10 respectively and also he has recovered the M.O.2 to M.O.5 at the place of occurrence in the Athatchi as per Ex.P.3 and also he has prepared Inquest Report as per Ex.P.11. Further, he has recorded the confession statement from the accused and also he has recovered the M.O.1 sovereign of gold stud, M.O.6 and M.O.7, namely, the dresses of the accused and the M.O.8(series) tickets 2 Nos. in the Athatchi as per Ex.P.5 and he has recorded the statement from the P.W.22 Postmortem Doctor and after the completion of the investigation, he has filed the final report.

3. On completion of the evidences on the side of the prosecution, the accused has been questioned under Section 313(1)(b) of Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and he has stated that he is an innocent person and he is not involved in the case.

4. Having considered all the above materials on record, the trial Court has convicted the appellant / accused and sentenced him as mentioned in the beginning of this Judgment and challenging the said conviction and sentence, the appellant has come forward with the present appeal.

5. It is stated in the Grounds of Appeal, that the Judgment of the Court below is based only on presumption, surmises and conjectures, which are not relevant to the facts and circumstances of the case. The Lower Court has not considered that the P.W.1, P.W.2, P.W.4, P.W.6 and P.W.8 are interested witnesses who are close relatives of the deceased. The Lower Court has failed to consider that the accused is only the friend of the son of the deceased person and there is no illicit intimacy between the appellant and the deceased. The Lower Court has not considered that the Ex.P.5 the tickets are not marked in this case, through the P.W.17, namely, the conductor of Dindigul Tamil Nadu State Transport Corporation. The Lower Court has failed to consider that P.W.9 and P.W.10 have been treated as the hostile witnesses. Further, the last scene theory is not established, in the present case. The P.W.1 has admitted in her evidence that the deceased has been seen in drunken mood. Further, the P.W.17, conductor would not allow the accused to travel upto Uthamapalayam without any further ticket in

the bus. The P.W.1, P.W.2, P.W.4 and P.W.6 have wantonly deposed as against the accused. The P.W.17 has not deposed that he has given the ticket to the appellant and the deceased, and he has not identified the appellant also. The blebs and marblings on the body would only appear, after 72 hours of the death. The body of the deceased has been seen by the P.W.22 on 08.05.2010 at 3.00 p.m., only. After 61 hours only, the Postmortem has been conducted. Actually, the P.W.12 the Assistant of Village Administrative Officer and the P.W.15, Village Administrative Officer have not identified, correctly and specifically before the Lower Court, about the ear studs. So, the recovery of the studs from the appellant is highly unbelievable. As per the prosecution, P.W.8 has beaten the deceased and the appellant. P.W.8 is the real accused in the present case and it has been suppressed by the police. Further, no document or complaint has been marked by the P.W.18, regarding the complaint lodged by the wife of the appellant. The occurrence would have been caused by some other persons by using the bottles and also by hitting on the head of the deceased and without proper investigation, the investigation officer has registered the case as against the appellant.

6.The points that arise for consideration in the present Criminal Appeal are as follows:-

- 1) Whether the Lower Court has passed the impugned Judgment, after properly appreciating the materials on record, in the proper perspective?
- 2) Whether the Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant?

7.Analysis, discussions and findings with regard to the above mentioned points:-

The learned counsel for the appellant has vehemently submitted that the prosecution case has suffered due to the serious infirmities and inconsistencies. The learned counsel for the appellant has also submitted that the prosecution has put forth its contention by placing reliance on the interested witnesses. The evidences of the prosecution witnesses are not believable and they have not given

clear and cogent evidences and the prosecution has miserably failed to prove the case beyond reasonable doubt, as against the appellant herein.

8. Per contra, the learned Additional Public Prosecutor has submitted that the case of the prosecution has been established by adducing clear and consistent evidences through the prosecution witnesses. The learned Additional Public Prosecutor has also contended that there is no serious infirmities and inconsistencies between the evidences of prosecution witnesses. Further, the material objects have been recovered to substantiate the case of the prosecution. The learned Additional Public Prosecutor has also submitted that though certain discrepancies have been pointed out by the defence in the prosecution case, the same would not affect the main case of the prosecution.

9. The P.W.1 Jeyalakshmi has deposed that she is the mother of the deceased Manonmani and 05.05.2010, the deceased has gone to meet her husband working at Eratrupettai, at Kerala and the accused has also gone along with her and they have returned at mid night on 06.05.2010 and hence, the P.W.1 has scolded them and send them back and on 07.05.2010 at 3.00 p.m., she has heard about the death of the deceased, through the P.W.3 and she has gone to the place of occurrence near M.D.C.C. Bank, Uthamapalayam and seen the dead body of the deceased Manonmani and thereafter, she and the P.W.2 Kumudha, namely, the grand daughter of the P.W.1 have gone to the police station and the P.W.2 has written the complaint, as per the dictation of the P.W.1 and the P.W.1 has lodged the complaint as per Ex.P.1 to the police. Further, the P.W.2 Kumudha has deposed that she has written the Ex.P.1 complaint, as per the dictation of the P.W.1, namely, her grand mother and the P.W.1 has lodged the said complaint with the police.

10. In the Ex.P.1 complaint, the P.W.1 has particularly stated that the deceased Manonmani is her fourth daughter and she has been married to P.W.8 Saminathan and they have lived as husband and wife for only three years and the deceased and her husband(P.W.8) have lived separately, due to the problem and the deceased has got one son, by named Ashok Kumar(P.W.6), aged 16 years and on 05.05.2010, the deceased has gone to meet her husband at Eratrupettai,

at Kerala along with the accused and they have returned at the mid night on 06.05.2010 and thereafter, the P.W.1 has scolded both of them and send them back and on 07.05.2010, in the afternoon at about 3 p.m., he has received the message from her grandson, namely, the P.W.3 Kesavan through phone that nearer to Uthamapalayam bus stand, near M.D.C.C. Bank, the dead body of the deceased Manonmani has been seen by the P.W.1's grand son and thereafter, the P.W.1 and P.W.2 have gone there and seen the dead body of the deceased and also the P.W.1 has also lodged the Ex.P.1 complaint to the police. Further, the Ex.P.1 complaint has been received by the P.W.20 Thiru.Selvaraj, Sub Inspector of Police, on 07.05.2010 at 16 hours only and the Ex.P.7 F.I.R has been registered based upon the said complaint and the learned Judicial Magistrate has received the Ex.P.7 F.I.R only, on 07.05.2010, at 10.30 p.m., as per the endorsement made in the said F.I.R.

11. Further, the P.W.2, P.W.6 Ashok Kumar and the P.W.8 Saminathan have deposed that the deceased has gone along with the accused to Eratrupettai at Kerala and met the P.W.8 Saminathan, namely, the husband of the deceased and they have returned back at the mid night on 06.05.2010 and hence, the P.W.1 has scolded them and send them back and thereafter only, on 07.05.2010 in the afternoon at 3.00 p.m., only, the P.W.3 the grandson of the P.W.1 has seen the dead body of the deceased and the P.W.3 has informed to the P.W.1 through phone and there are no eyewitnesses, who have seen the brutal assault caused to the deceased by the accused.

12. The Ex.P.2 Observation Magazar has been prepared by the P.W.23 Thiru.Seemaisamy, Inspector of Police only on 07.05.2010 at 4.35 p.m., and the Ex.P.3 and Ex.P.5 Athatchy have been prepared only on 07.05.2010 and 08.05.2010 respectively. Further, the P.W.1 has categorically admitted in her evidence that she has seen the deceased and the accused at the time of mid night on 06.05.2010 and the deceased has been seen in drunken mood, by the P.W.1. Further, the P.W.1 has obviously deposed and also, in Ex.P.1 complaint itself, that the deceased has lived with the P.W.8 Saminathan only for 2 to 3 years, as husband and wife and thereafter, due to the problem, they have lived separately and they have got one son, namely, the P.W.6 Ashok Kumar, aged 16 years.

Hence, it is seen that there are serious doubts, even as per the deposition given by the mother of the deceased, namely, the P.W.1, regarding the peaceful living of the deceased, after her marriage with the P.W.8. On that ground only, it has been suggested on behalf of the accused that the deceased could have been murdered by someone else for her illegal activities. Further, the P.W.1 has admitted that the P.W.2 has written the Ex.P.1 complaint and she has lodged the said complaint to the police. However, the P.W.1 has clearly deposed in the cross examination that they have not written the Ex.P.1 complaint and only the police have written the said complaint. Hence, it is found that there are vital contradictions in the evidences of the P.W.1 and the P.W.2, regarding the lodging of the said complaint itself.

13. Further, the P.W.1 has deposed that M.O.1 is the gold stud of the deceased. However, in the cross examination, she has deposed that she cannot say the nature and design of the gold stud of the deceased. Further, the P.W.1 has specifically admitted that nearer to the place of occurrence, there are so many residential houses, and if in case, the accused has murdered the deceased by dashing the head of the deceased on the floor, as pointed out by the prosecution, then certainly she should have raised the noise and the same would have been heard by the nearby persons. Further, the P.W.1 has particularly admitted that there are many houses nearer to the place of occurrence and in the place of occurrence, there would be the movement of the people. Further, the P.W.2 has deposed that the deceased has informed to all the persons in the house that she is going to Kerala to meet her husband. However, the P.W.1 has scolded the deceased and the accused, for roaming the places together.

14. Further, the P.W.3, namely, the grand son of the P.W.1 has deposed that he has informed to the P.W.1, through phone, about witnessing the dead body of the deceased on 07.05.2010, at 3.00 p.m., near M.D.C.C. Bank at Uthamapalayam and thereafter, the P.W.1 and the P.W.2 have come to the place of occurrence. Hence, there is a long gap between the alleged offence as pointed out by the prosecution and also for the first time, the P.W.3 has seen the dead body of the deceased only on 07.05.2010 in the afternoon at 3.00 p.m. Further, the P.W.5, P.W.9 and P.W.10 have been treated as hostile witnesses, as they have not

supported the case of the prosecution.

15. Further, the P.W.8 Saminathan, the husband of the deceased Manonmani has deposed that he and the deceased Manonmani have lived as husband and wife only for three years and thereafter, they have lived separately for the past seven years. Further, he has admitted that only after conducting the Postmortem, the police have enquired him. Further, the P.W.12 Ganesan, Village Assistant has clearly pointed out that on 08.05.2010, he has gone to place of occurrence along with the police, during the night time and the police have informed only Kaliasman Kovil Theru and he does not know about the exact place, where the confession statements and Athatchi have been prepared, specifically. Further, the P.W.14 Thiru.Manoharan, Thashildar has deposed that on 08.05.2010, he has gone to the place of occurrence and signed in the place where the P.W.15 Village Administrative Officer, Village Assistant and the accused have signed, as per the direction of the police. Further, the P.W.15 has deposed that he can say hair stud only and he cannot give the exact details of the hair stud, namely, M.O.1.

16. Further, it is pertinent to point out that the P.W.17, namely, the conductor of Dindigul Tamil Nadu State Transport Corporation has only deposed that on 06.05.2010, he has given so many tickets to so many passengers and he cannot tell as to whether, he has issued the Ex.P.8(series) tickets 2 Nos., and the police have enquired him only after 4 or 5 months after the incident and in the said tickets, the letters and details are not clear to read. Further, the P.W.18 Tmt.Jothi, Sub Inspector of Police has evidently deposed that she has not produced the case records, with regard to the dispute arose between the accused and his wife Sonia and also she has not filed any case records of the said case. On that ground only, it has been suggested on behalf of the respondent that the P.W.18 has deposed as per the request made by the Inspector of Police.

17. Further, the P.W.20 Thiru.Selvaraj, Sub Inspector of Police has distinctly deposed that on 07.05.2010 at 16 hours, he has received the Ex.P.1 complaint from the P.W.1 and registered a case in Crime No.369 of 2010 under Section 302 I.P.C. Further, he has admitted that the P.W.1 has not informed to him that she has scolded the deceased, as the deceased has gone to meet her husband along

with the accused. Further, the P.W.1 has admitted in her cross examination that the police only has written the Ex.P.1 complaint. Further, the P.W.21 Thiru.Udhayakumar, Head Clerk of the Judicial Magistrate Court, Uthamapalayam has deposed that in Form-95 it has been only mentioned about the sovereigns of Gold stud and the details of the ear stud have not been mentioned. Further, the P.W.1 has also admitted that she has not stated about the exact details of the M.O.1 ear stud.

18. Further, the P.W.22 Dr.Juliana Jeyanthi has clearly pointed out that on 08.05.2010, she has conducted the Postmortem on the dead body of the deceased Manonmani and issued Postmortem Certificate as per Ex.P.8 and in the said Postmortem Certificate, she has given her opinion as follows:-

Opinion : The deceased would appear to have died of Head injury sustained by her, 35 hrs to 39 hrs prior to autopsy. ?

Further, the P.W.22 Doctor who has conducted the Postmortem, has clearly pointed that in the Ex.P.8 Postmortem Certificate, the condition of the dead body of the deceased has been seen saponified. In the Book of Modi's Medical Jurisprudence and Toxicology, Twenty-second Edition, under the caption of **Times of Formation of Adipocere(Saponification)**, it is pointed out as follows:-

Of twelve cases of adipocere, which came under Modi's observation during a period of six years between 1918 and 1923, the following typical cases are quoted.

On 26 February 1922, a report was made at the police station Malihabadm Lucknow District, that Ramadhin, Brahmin, fifty-five years old, resident of Ramgarh, was missing. On the 2 April, the body of the said Ramadhin was found in a well in village Hamirpur. Postmortem examination was held on the following day. The body was well preserved. There was no disagreeable smell. The eyeballs had been disintegrated and the teeth loosened. Saponification had taken place in the soft tissues of the trunk, scrotum, penis and extremities. There was an incised wound measuring four inches by two inches across and right side of the neck cutting the larynx below the thyroid cartilage, and the fifth cervical vertebra. The brain was liquefied. The lungs were decomposed and disintegrated to a small

black mass. The abdominal fat and mesentery were saponified. The liver appeared to be undergoing saponification. The spleen was reduced to almost a liquid mass. The kidneys were reduced to a small putrefied mass, but the bladder was normal and empty. ?

Further, the P.W.22 Doctor, who has conducted the Postmortem on the dead body of the deceased, and issued the Postmortem Certificate, as per Ex.P.8 has pointed out in the said Certificate that the body has been first seen by the said Doctor at 3.00 p.m., on 08.05.2010. Further, the said Doctor has pointed out in the Ex.P.8 Postmortem Certificate as follows:-

It's condition then was saponified.

Postmortem commenced at 03.00 p.m., on 08.05.2010 ?

In the said circumstances only, it is rightly pointed out on behalf of the appellant that the prosecution has not established the date and time of the occurrence, beyond reasonable doubts.

19. Further, the P.W.23 the Investigation Officer has particularly admitted that he has not stated in the Athatchi, regarding the specific details of M.O.1 ear stud. Further, the P.W.23 has deposed that in M.O.8 tickets 2 Nos. and one ticket has been taken up to Uthamapalayam and another ticket has been taken up to K.Pudhupatti and he has also admitted that one ticket has been taken at 12.48 hours and another ticket has been taken at 12.42 hours and in the ticket date as 07.05.2010 has been mentioned. Further, the P.W.17 conductor has not specifically deposed about the M.O.8(series) tickets 2 Nos. as pointed out by the prosecution.

20. Further, it is useful to refer the following Judgments :-

i) The Judgment reported in **AIR 1990 Supreme Court 79 (Padala Veera Reddy V. State of A.P.)**, it is precisely held as follows:-

This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:-

- 1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- 2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- 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
- 4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. ?

In the case on hand also, it is found that the prosecution has failed to establish cogently the hypothesis of the guilt of the appellant herein.

ii) Further, in the Judgment reported in **AIR 1990 Supreme Court 2957 (Harishchandra Ladaku Thange V. State of Maharashtra)**, it is significantly observed as follows:

In *Hanumant Govind Nargundhar and another V. State of M.P.* (AIR 1952 SC 343) it was observed thus:

'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.' ?

iii) Further, in the Judgment reported in **(2011) 3 SCC(Cri) 457 and (2011) 11 SCC 666 (State of Rajasthan V. Talevar and another)**, it is significantly held as follows:-

More so, recovery is either of cash, small things or vehicles which can be passed from one person to another without any difficulty. In such a fact situation, we reach the inescapable conclusion that no presumption can be drawn against the said two respondent-accused under Section 114 Illustration (a) of the Evidence Act. No adverse inference can be drawn on the basis of recoveries made on their disclosure statements to connect them with the commission of the crime. ?

In this case also, it is found that the prosecution has failed to establish the recovery of the material objects in an appropriate way and also in accordance with law and the prosecution has failed to establish the above mentioned case of the prosecution, beyond reasonable doubts.

21. In view of the above mentioned discussions, this Court has no hesitation to hold that the prosecution has not established the guilt of the appellant beyond reasonable doubts and the above mentioned circumstances also create serious doubt in the case of the prosecution. The doubts have not been clearly explained by the prosecution in any manner and thus, the appellant is entitled to get the benefit of such doubts. For the above mentioned reasons, facts and circumstances and situations, it is found that the Lower Court has not passed the impugned Judgment after properly appreciating the materials on record in proper perspective and in the present appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant and thus, the points are answered in favour of the appellant herein.

22. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed by the learned Additional District and Sessions Judge, Theni at Periyakulam, by judgment dated 24.07.2012 delivered in S.C.No.109 of 2010 is set aside and the appellant/accused/Kubendran in Crime No.369 of 2010 is acquitted. The bail bond, if any, executed by him shall stand cancelled and fine amount, if any, paid by him shall be repaid to him.