

H.Kamaludin Vs. The State

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SooperKanoon Citation : sooperkanoon.com/44224

Court : Chennai

Decided On : Jan-30-2015

Judge : The Hon'ble Mr.Sanjay Kishan Kaul Chief Justice

Appellant : H.Kamaludin

Respondent : The State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

12. 10.2009 CORAM THE HONOURABLE MR. JUSTICE C.NAGAPPAN AND THE HONOURABLE MR. JUSTICE M.JEYAPPAUL CrI.A.No.714 of 2008 1. Murali 2. Sekar alias Rajasekar 3. Sasi alias Sasikumar .. Appellants/Accused Nos.1 to 3 Vs. State, rep. by Inspector of Police, K1, Sembium Police Station Chennai. (Crime No.2031 of 2006) .. Respondent/Complainant Prayer: Appeal against the Judgment, dated 19.8.2008, passed in Sessions Case No.305 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.III, Chennai. For Appellants 1 and 2 :: Mr.S.Shanmugavelayudam Senior Counsel for Mr.N.Raja Senthoo Pandian For Appellant :: Mr.N.Duraisamy for No.3 Mr.M.Rajendran For Respondent :: Mr. N.R.Elango Addl. Public Prosecutor

JUDGMENT

(The Judgment of the Court was delivered by C. NAGAPPAN, J.) The appellants herein are the Accused Nos.1 to 3 in Sessions Case No.305 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.III, Chennai and they have preferred this appeal challenging the conviction and sentence imposed on them by judgment dated 19.8.2008 in the case. For the sake of convenience, in this Judgment, the appellants will be referred to as A1 to A3.

2. Charges under Sections 120-B, 380 and 302 r/w 34 IPC were framed against A1 Murali, A2 Sekar alias Rajasekar and A3 Sasi alias Sasikumar. The learned Additional Sessions Judge found A1 to A3 guilty of the charges and convicted and sentenced them to undergo three years Rigorous Imprisonment each and to pay a fine of Rs.1000/- each, in default, to undergo Simple Imprisonment for six months each for the charge under Section 120-B IPC; convicted and sentenced them to undergo seven years Rigorous Imprisonment each and to pay a fine of Rs.5000/- each, in default, to undergo Simple Imprisonment for two years each for the charge under Section 380 IPC and convicted and sentenced them to undergo Life Imprisonment each and to pay a fine of Rs.5000/- each, in default, to undergo Simple Imprisonment for two years each for the charge under Section 302 r/w 34 IPC and ordered the sentences to run concurrently.

3. To prove its case, the prosecution examined P.Ws.1 to 18 and marked Exs.P1 to P33 and M.Os.1 to 19.

4. The case of the prosecution, as could be discerned from oral and documentary evidence, can be briefly summarised as follows. P.W.1 Jayalakshmi is the wife of deceased Sriramulu and PW.2 Sridevi is their daughter. Sriramulu was employed as Manager in MCC Bank at Vellore and retired and he was residing alone in Meenu Flats, Perambur and was doing money lending business. PW.2 Sridevi was living with her family in Akash Flats at Perambur. P.W.1 Jayalakshmi was residing with her daughter PW.2 Sridevi in Akash Flats and Sriramulu used to come daily to their house and take food therein. On 12.12.2006 in the afternoon, Sriramulu came to the house of PW.2 Sridevi and took lunch and went away. At about 4.30 pm, he called PW.2 Sridevi over phone and told her that he is going out for pooja and thereafter he did not communicate. PW.6 Ganesan took Gas Cylinder to

Sriramulu's house in Meenu Flats at 4 pm on 13.12.2006 and rang the calling bell and also called, but there was no response. He met PW.3 Vathsala, a resident of Meenu Flats in the ground floor and informed her about the same. PW.3 Vathsala, at about 6.30 pm, went upstairs to pick up the dried clothes and she noticed that the lights in Sriramulu's house were not switched on and the outer door closed and foul smell emanating from the house. At 7 pm on the same day, she called PW.2 Sridevi over phone and informed her of the same. PW.2 Sridevi went to Meenu Flats along with Srinivasan and Raju and switched on the lights and found the body of Sriramulu in sofa with hands and legs tied with nylon rope and the neck encircled and tied with cloth and the bracelet, gold chain, two rings, cellphone and citizen watch usually worn by her father missing from the body and the bureaus were found open. She informed her mother and sent an Auto to fetch her. PW1 Jayalakshmi went to Meenu Flats in the Auto and saw the body of her husband lying on the sofa with hands and legs tied and the neck tied with cloth. PW.1 Jayalakshmi went to Sembium Police Station at 8 pm on 13.12.2006 and narrated the above to a scribe who reduced it into writing and read over to her and thereafter she put her signature in Ex.P1 Complaint and handed it over and PW.18 Inspector Sarvesan received the same and registered a case in Crime No.2031 of 2006 under Sections 302 and 380 IPC and prepared Ex.P25 First Information Report and sent the same to the Court and higher officers. He went to the occurrence place at 8.30 pm and prepared Ex.P3 Observation Mahazar in the presence of P.W.4 Shanmugam and PW.5 Veerapandian and Ex.P26 is the Rough sketch drawn by him. He seized MO.14 Blood stained sofa cover, MO.18 Blood stained piece of Turkey towel, MO.17 Blood stained plastic rope 9 ft length, MO.16 Nylon rope 2 1/2 ft length from the occurrence place under Ex.P27 mahazar in the presence of same witnesses. He conducted inquest on the body from 9 pm to 10 pm in the presence of panchayatars and prepared Ex.P28 Inquest Report. He examined PW.1 Jayalakshmi, PW.2 Sridevi, PW.3 Vathsala, PW.4 Shanmugam and PW.5 Veerapandian and some other witnesses on 13.12.2006 itself and recorded their statements. He sent the body for post-mortem through PW.16 Head Constable Krishnakumar with Ex.P7 Requisition. P.W.8 Dr.Udayasankar conducted post-mortem on the body of Sriramulu at 3 pm on 14.12.2006 and found the following. "External Injuries:- Body decomposed.

Peeling of the skin present. Ligature abrasion over the neck measuring 28 x 1 cm above the thyroid cartilage. From the chin 8 cm, from the sternum 7 cm, from the right mastoid process 10 cm, from the left mastoid process 8 cm. Hyoid bone and Thyroid Cartilages are Intact. Trachea: Incised cut injury in the anterior aspect of the trachea in a horizontal direction 11 x 4 cm. Hyoid bone, Thyroid Cartilages are Intact. Heart: Normal, Lungs: Normal, Larynx & Trachea: Trachea incised cut injury in the anterior aspects in the horizontal direction measuring 11 x 4 cm. Stomach: Empty. Liver, Spleen, Kidney: Normal C/s Congested. Intestines: Normal & empty. Pelvis, Skull, Brain & Spinal Column: Normal & Intact. Bladder:

50. ml of turbid urine present."

He expressed opinion that the death has occurred on account of cumulative effect of Asphyxia due to ligature compression, cut Throat Injury, Haemorrhage and shock. Ex.P8 is the Post-mortem Certificate issued by him. PW.16 Head Constable Krishnakumar took MO.11 Blood stained Dhoti, MO.12 Blood stained 'T' Shirt, MO.13 Blue colour jatti from the body and produced the same and PW.18 Inspector Sarvesan seized it under Ex.P23 Form 95. He examined PW.16 Head Constable Krishnakumar, PW.6 Ganesan on the same day and recorded their statements. On 16.12.2006, he received information that A1 Murali and A2 Sekar alias Rajasekar surrendered before the VII Metropolitan Magistrate, Saidapet and he gave petition seeking for Police custody of both of them. P.Ws.1 and 2 took the body of Sriramulu to their native place Ambur and buried the same. They returned to Perambur on 18.12.2006 and went to the occurrence house and checked the articles in the bureau and found MO.7 Gold chain with Black bead, MO.8 Two gold bangles, MO.9 Bracelet, M.Os.5 and 6 Rings all belonging to PW.2 Sridevi, Cellphone missing from the bureau. PW.1 Jayalakshmi went to Sembium Police Station on 18.12.2006 at 4 pm and gave Ex.P2 intimation stating the missing of the above articles and PW.18 Inspector Sarvesan received the same and he further examined PW.1 Jayalakshmi, PW.2 Sridevi and Sridhar and recorded their statements on the same day. On his requisition, the Police custody of A1 Murali and A2 Sekar alias Rajasekar was granted for the period from 20.12.2006 to 22.12.2006 and on taking them on Police Custody, PW.18 Inspector Sarvesan enquired A1 Murali at 8 am on 21.12.2006 in the presence of PW.10 Selvam and

another and recorded the confession statement given by him in their presence. Ex.P29 is the admissible portion. At 8.15 am, he enquired A2 Sekar alias Rajasekar in the presence of same witnesses and recorded the confession statement given by him. Ex.P30 is the admissible portion of the said confession given by A2 Sekar. A1 Murali gave information that he pledged MO.3 Gold chain through PW.12 Sasikumar in the Pawn Shop owned by PW.11 Madhanlal. At 11 am on 21.12.2006, PW.18 Inspector Sarvesan recovered MO.3 Gold chain under Ex.P12 mahazar in the presence of PW.10 Selvam and another. At 11.30 am, on the information given by A1 Murali, PW.18 Inspector Sarvesan recovered MO.1 Bracelet and MO.10 Citizen Wrist Watch under Ex.P13 mahazar from PW.13 Mahadevan in the presence of PW.10 Selvam and another. On the same day, at 1 pm, on the information given by A2 Sekar alias Rajasekar, PW.18 Inspector Sarvesan went to Sri Jagathamba Bankers Pawn Shop run by PW.14 Ruparam and recovered MO.2 Ring from the shop under Ex.P14 mahazar in the presence of PW.10 Selvam and another. At 1.30 pm, on the information furnished by A1 Murali, PW.18 Inspector Sarvesan recovered MO.4 Ring from Ganesh Pawn shop run by PW.15 Hemaram under Ex.P15 mahazar in the presence of PW.10 Selvam and another. At 2 pm, A2 Rajasekar took them to his house and took and produced M.Os.5 and 6 Rings and MO.7 Gold Chain with black bead and he recovered them under Ex.P16 mahazar in the presence of PW.10 Selvam and another. At 2.30 pm, A1 Murali took them to his fish vending shop and took and produced MO.19 Knife and he recovered it under Ex.P18 mahazar in the presence of PW.10 Selvam and another. At 4 pm, PW.18 Inspector Sarvesan arrested A3 Sasi alias Sasikumar in Perambur Railway Station and at 4.30 pm, he enquired him in the presence of PW.10 Selvam and another and recorded his confession statement. Ex.P31 is the admissible portion of the confession. A3 Sasikumar took them to his house and took and produced MO.8 Gold Bangles and MO.9 Gold Bracelet and he recovered them under Ex.P20 mahazar in the presence of PW.10 Selvam and another. PW.18 Inspector Sarvesan examined PW.10 Selvam, PW.11 Madhanlal, PW.12 Sasikumar, PW.13 Mahadevan, PW.14 Ruparam, PW.15 Hemaram on 21.12.2006 and recorded their statements. He sent all the accused to judicial remand on 22.12.2006. He gave Ex.P32 requisition to send the properties for chemical examination and they were sent through Ex.P33 letter of

the Court. Exs.P5 and P6 are the Serologist reports. Ex.P9 is the Toxicology report received in the Court. He examined PW.8 Dr.Udayasankar on 22.12.2006 and recorded his statement. He completed the investigation on 14.3.2007 and filed final report.

5. The incriminating circumstances appearing against the accused were put to them during their examination under Section 313 Cr PC and they denied complicity. D.Ws.1 and 2 were examined and Exs.D1 and D2 were marked on their side.

6. The Trial Court held that the charges against the accused are proved and sentenced them as stated earlier. Challenging the conviction and sentence, they have preferred the present appeal.

7. Sriramulu died of homicidal violence is established by the testimony of Post-mortem doctor. P.W.8 Dr.Udayasankar has testified that he conducted post-mortem on the body at 3 pm on 14.12.2006 and found ligature abrasion over the neck measuring 28 x 1 cm above the thyroid cartilage and incised cut injury in the anterior aspect of trachea 11 x 4 cms. He has expressed opinion that the deceased died on account of cumulative effect of Asphyxia due to ligature compression, cut throat injury, haemorrhage and shock. Ex.P8 is the Post-mortem Certificate issued by him. Accepting the medical testimony, it is clear that Sriramulu died of injuries sustained during the occurrence.

8. The prosecution case is that all the accused conspired and in pursuance of common intention they committed the murder of Sriramulu and committed theft of the articles worth about Rs.1,50,000/- in his house. Nobody witnessed the occurrence and the case is based on circumstantial evidence.

9. The only circumstance let in and relied on by the prosecution is the independent disclosure statements given by the accused leading to recovery of M.Os.1 to 10 Jewels, M.O.15 Cellphone and M.O.19 Knife.

10. Mr.Shanmugavelayudam, learned Senior Counsel appearing for the appellants 1 and 2, submits that the prosecution has not proved that the accused gave

information which led to recovery of material objects and there are no other evidence available for implicating the accused in the offence of murder and the prosecution also has not established the charge of criminal conspiracy as well as the charge of theft of articles and the conviction and sentence imposed on the accused are liable to be set aside. The learned counsel for the third appellant submits that the onus is on the prosecution to prove that the chain of evidence is complete and the prosecution has failed to do so and the charges are not established.

11. Per contra, the learned Additional Public Prosecutor submits that the Investigation Officer has spoken to about the information given by the accused which led to recovery of material objects and the prosecution has established the recovery of jewels, cellphone of the deceased and the conclusion of the Trial Court is sustainable.

12. Ex.P1 is the Complaint given by PW.1 Jayalakshmi stating that she found the body of her husband Sriramulu in sofa with hands and legs tied with nylon rope and the neck encircled and tied with cloth and the bracelet, gold chain, rings, cellphone and citizen watch usually worn by her husband were missing from the body and the bureaus were found open. The case came to be registered on Ex.P1 Complaint and the investigation was in progress.

13. On 18.12.2006, PW.1 Jayalakshmi gave Ex.P2 intimation stating that after their return from the native place burying the body, they checked the articles in the bureaus in the occurrence house and found gold chain with black bead, two gold bangles, bracelet, two ladies rings and cellphone stolen from the bureau. The Investigation Officer received the intimation and continued the investigation.

14. The learned Senior Counsel appearing for the appellants submits that Ex.P2 intimation looks artificial and had come into being six days after the occurrence alleging missing of certain other articles belonging to the family of the deceased and no reliance can be placed on it. The learned Additional Public Prosecutor submits that the family members went to their native place for burial of the body and after returning to Chennai, they happened to verify the belongings in the bureau and that led to Ex.P2 intimation.

15. Admittedly, the deceased Sriramulu was living alone in his flat and there were bureaus in his bedroom. PW.2 Sridevi on receiving the phone message from PW.3 Vathsala rushed to the occurrence house and noticed the missing of jewels worn by her father from the body. It is the further testimony of PW.2 Sridevi that she also noticed that bureaus were opened and the clothes were strewn in it. Having noticed the missing of jewels from the body of the deceased, she ought to have verified the articles in the bureaus which were found open. In Ex.P1 Complaint, PW.1 Jayalakshmi has only mentioned the missing of jewels worn by the deceased. If at all there are other family jewels kept and missing from the bureaus, it ought to have been mentioned in the complaint. That was not mentioned. The testimonies of P.Ws.1 and 2 that after six days of the occurrence they verified the articles of the bureaus and found the missing of family jewels appear to be artificial and much reliance cannot be placed on it.

16. M.O.1 Gold Bracelet and M.O.10 Citizen Wrist Watch were identified by P.Ws.1 and 2 as worn by the deceased Sriramulu. The prosecution case is that A1 Murali entrusted M.Os.1 and 10 articles with his friend Mahadevan. The said Mahadevan has been examined as PW.13 and he has testified that his signature was obtained in Police Station in blank white paper. He was declared as hostile by the prosecution. Both the above articles are said to have been recovered from PW.13 Mahadevan under Ex.P13 mahazar in the presence of PW.10 Selvam and Thiagarajan pursuant to the information given by A1 Murali in his confession statement. PW.10 Selvam in his testimony has stated that the signature found in the confession statement of A1 Murali is his and the signature alone was marked as Ex.P10. It is to be noted that PW.10 Selvam did not state in his testimony that A1 Murali gave information in his confession statement in his presence. In fact, he did not speak about the admissible portion of the confession statement and it was not marked through him. It came to be marked only through the Investigation Officer PW.18 Inspector Sarvesan. The prosecution has not examined the other mahazar witness Thiagarajan to prove that A1 Murali gave information in his confession statement. No reason is stated by the Investigation Officer as to the non-examination of Thiagarajan. Only in his testimony PW.18 Inspector Sarvesan has stated that A1 Murali surrendered in the case before the VII Metropolitan Magistrate, Saidapet and he took him on Police custody and enquired him in the

presence of PW.10 Selvam and Thiagarajan and A1 Murali gave confession and Ex.P29 is the admissible portion of it. PW.10 Selvam was not treated as hostile though he did not state that A1 Murali gave information in his confession statement in his presence and the prosecution had failed to examine the other mahazar witness Thiagarajan. In such circumstances, the testimony of the Investigation Officer alone cannot prove that A1 Murali gave confession statement containing Ex.P29 information and that led to recovery of the articles. It is also not safe to rely on the testimony of PW.10 Selvam with regard to recovery of the above articles under Ex.P13 mahazar and the prosecution has failed to prove that A1 Murali gave information in his confession statement which led to the recovery of the material objects.

17. The prosecution case further is that MO.2 Red Stone Gold Ring was pledged by A2 Sekar alias Rajasekar through Suresh in Sri Jagathamba Bankers run by PW.14 Ruparam. Suresh was not examined in the case. PW.14 Ruparam has testified that MO.2 Red stone Gold Ring was pledged on 12.12.2006 in his shop in the name of Suresh and he issued Ex.P21 Pledge Receipt in the name of Suresh. PW.14 Ruparam did not identify the accused in the trial. Ex.P21 Pledge Receipt is also in the name of Suresh. Hence the testimony of PW.14 Ruparam does not advance the prosecution case. MO.2 Red Stone Gold Ring is said to have been recovered under Ex.P14 mahazar in the presence of PW.10 Selvam and Thiagarajan pursuant to the information given by A2 Sekar. PW.10 Selvam in his testimony has stated that the signature found in the confession statement of A2 Sekar is his and the signature alone was marked as Ex.P11. It is to be noted that PW.10 Selvam did not state in his testimony that A2 Sekar gave information in his confession statement in his presence. In fact, he did not speak about the admissible portion of the confession statement and that came to be marked only through the Investigation Officer PW.18 Inspector Sarvesan. The prosecution has not examined the other mahazar witness Thiagarajan to prove that A2 Sekar gave information in his confession statement. No reason is stated by the Investigation Officer as to the non-examination of Thiagarajan. Only in his testimony PW.18 Inspector Sarvesan has stated that A2 Sekar surrendered in the case before the VII Metropolitan Magistrate, Saidapet and he took him on Police custody and enquired him in the presence of PW.10 Selvam and Thiagarajan and A2 Sekar

gave confession statement and Ex.P30 is the admissible portion of it. PW.10 Selvam was not treated as hostile though he did not state that A2 Sekar gave information in his confession statement in his presence and the prosecution had failed to examine the other mahazar witness Thiagarajan. In such circumstances, the testimony of the Investigation Officer alone cannot prove that A2 Sekar gave confession statement containing Ex.P30 information and that led to recovery of the article. It is unsafe to rely on the testimony of PW.10 Selvam with regard to recovery of MO.2 Red Stone Gold Ring under Ex.P14 mahazar and the prosecution has failed to prove that A2 Sekar gave information in his confession statement which led to the recovery of MO.2 Red Stone Gold Ring.

18. It is the further case of the prosecution that A1 Murali handed over MO.3 Machine Cutting Gold Chain to his friend Sasikumar who in turn sold the same to Madhanlal for a sum of Rs.29,500/-. Sasikumar was examined as PW.12 and he has testified that he had put his signature in white blank paper in the Police Station and he did not know anything about the case. He was declared hostile. Madhanlal was examined as PW.11 and he has testified that PW.12 Sasikumar on 13.12.2006 sold MO.3 Machine Cutting Gold Chain in his shop and he gave a sum of Rs.29,500/- as sale price to PW.12 Sasikumar in two instalments. PW.11 Madhanlal did not speak about the presence of A1 Murali in his shop during the sale transaction. PW.12 Sasikumar having turned hostile, the prosecution has failed to establish that MO.3 Gold Chain came to be sold at the instance of A1 Murali. The further prosecution case is that MO.3 Gold Chain came to be recovered pursuant to the information given by A1 Murali in his confession statement in the presence PW.10 Selvam and Thiagarajan. As already seen, the prosecution has failed to establish that A1 Murali gave information in his confession statement in the presence of PW.10 Selvam and Thiagarajan leading to recovery of material objects. In such circumstances, it is unsafe to rely on the testimony of PW.10 Selvam with regard to the recovery of MO.3 Gold Chain from PW.11 Madhanlal.

19. MO.4 Navaratna Stone Gold Ring is said to have been pledged by A2 Sekar in the name of Suresh with PW.15 Pawn Broker Hemaram. PW.15 Hemaram has testified that on 12.12.2006, MO.4 Navaratna Stone Gold Ring was pledged in his

shop in the name of Suresh and he issued Ex.P22 Pledge receipt. PW.15 Hemaram did not identify the accused in the trial. It is his testimony that he could not say as to who pledged MO.4 Navaratna Stone Gold Ring in the name of Suresh and he did not see any of the accused. The testimony of PW.15 Hemaram does not advance the prosecution case in any way. The further case of the prosecution is that A2 Sekar gave information in his confession statement which led to recovery of MO.4 Navaratna Stone Gold Ring under Ex.P15 mahazar in the presence of PW.10 Selvam and Thiagarajan. As already seen, the prosecution has failed to establish that A2 Sekar gave information in his confession statement in the presence of PW.10 Selvam and Thiagarajan leading to recovery of material objects. In such circumstances, it is unsafe to rely on the testimony of PW.10 Selvam with regard to the recovery of MO.4 Navaratna Stone Gold Ring.

20. M.Os.5 and 6 Gold Rings and MO.7 Gold Chain are said to have been recovered from the house of A2 Sekar, pursuant to the information given by him in the presence of PW.10 Selvam. It is already concluded that the prosecution has failed to prove that A2 Sekar gave information in his confession statement. In such circumstances, it is not safe to rely on the testimony of PW.10 Selvam with regard to the recovery of M.Os.5 and 6 Gold Rings and MO.7 Gold Chain from the house of A2 Sekar.

21. The prosecution case is that MO.8 Pearl Gold bangles and MO.9 Bracelet were recovered from A3 Sasikumar in his house under Ex.P20 mahazar in the presence of PW.10 Selvam and Thiagarajan. The Investigation Officer PW.18 Inspector Sarvesan has stated that he arrested A3 Sasikumar at 4.30 pm on 21.12.2006 in Perambur Railway Station and enquired him in the presence of PW.10 Selvam and Thiagarajan. PW.10 Selvam has testified that the signature found in the confession statement of A3 Sasikumar is his and that signature alone has been marked as Ex.P19. The prosecution has failed to examine the other witness Thiagarajan and no reason has been stated for his non-examination. The Investigation Officer in his testimony has stated that A3 Sasikumar gave Ex.P31 information in his confession statement in the presence of PW.10 Selvam and Thiagarajan. PW.10 Selvam was not treated as hostile though he did not state that A3 Sasikumar gave information in his confession statement in his presence and

the prosecution had failed to examine the other witness Thiagarajan. In such circumstances, the testimony of the Investigation Officer alone cannot prove that A3 Sasikumar gave confession statement containing Ex.P31 information and that led to recovery of the articles. It is unsafe to rely on the testimony of PW.10 Selvam with regard to recovery of MO.8 Pearl Gold bangles and MO.9 Bracelet under Ex.P20 mahazar and the prosecution has failed to prove that A3 Sasikumar gave information in his confession statement which led to the recovery of MO.8 Pearl Gold bangles and MO.9 Bracelet.

22. MO.15 Reliance Cellphone is said to have been recovered from the house of A1 Murali by the Investigation Officer PW.18 Inspector Sarvesan under Ex.P17 mahazar in the presence of PW.10 Selvam and Thiagarajan. The learned Senior Counsel appearing for the appellants submits that the defence has established through the testimony of DW.1 Prabhu that MO.15 Reliance Cellphone does not belong to deceased Sriramulu and it stands in the name of Mr.N.G.Balan. We find force in this submission and it is accepted. As per Ex.P17 mahazar, MO.15 Reliance Cellphone was recovered from the house of A1 Murali. Even as per the prosecution case, this recovery is not pursuant to any information given by A1 Murali in the confession statement. The prosecution has not proved this recovery and moreover this recovery does not advance the prosecution case in any way.

23. MO.19 Knife is said to have been recovered from the fish vending shop of A1 Murali under Ex.P18 mahazar pursuant to the information given by him in the confession statement in the presence of PW.10 Selvam and Thiagarajan. As already stated, the prosecution has failed to prove that A1 Murali gave information in his confession statement. In such circumstances, it cannot be concluded that MO.19 Knife came to be recovered at the instance of A1 Murali. It is also unsafe to rely on the testimony of PW.10 Selvam with regard to recovery of MO.19 Knife.

24. The prosecution has heavily relied on the testimony of PW.10 Selvam to prove the recovery of the material objects referred above at the instance of A1 to A3. In this context, it is relevant to refer to following portion of his testimony in cross-examination: "vjphpfs; bfhLj;j xg;g[jy; thf;FK:yj;jpy; xt;bthU rhd;W bghUSk; Fwpg;ghf vj;jid kzpf;F ifg;gw;wg;gl;IJ vd;W Fwpg;gpl;L brhy;y ,ayhJ/ Mdhy; Kj;d;

Kjypy; nghdJ kl;Lk; Fwpg;gpl;L brhy;y Koa[k;/ nghyPrhh; vd;id tprhhpj;jnghJ rhd;W bghUl;fs; ifg;gw;wpaJ Fwpj;J vj;jid kzpf;F ve;j bghUs; ifg;gw;wg;gl;IJ vd;W Fwpg;gpl;L brhy;ytpy;iy/ ifg;gw;wg;gl;l eiffs; vd;d fpuhk; vd;W vd;dhy; Fwpg;gpl;L brhy;y KoahJ/ nghyPrhh; njhuhakhf brhd;dij brhy;fpnwd;/ ehd; nghdjhf brhy;yg;gLk; xt;bthU ,lj;jpd; Kftup jw;ngHJ vd;dhy; brhy;y ,ayhJ/ nghyPrhhplk; ehd; bfhLj;j thf;FK:yj;jpy; ve;j ,lj;jpy; brd;w Kfthpia ehd; brhy;ytpy;iy vd;why; rhpjhd;/ 1 Kjy; 3 vjphpfs; K:ykhf ifg;gw;wg;gl;ljh f brhy;yg;gLk; bghUl;fs; ifg;gw;wg;gl;l ,l';fspy; jpir gw;wp vdf;F bjhpahJ/" 25. As already seen, PW.10 Selvam did not own the case of the prosecution that all the accused gave information in their confession statements. Though he has testified about the recovery of M.Os.1 to 10 jewels, MO.15 Reliance Cellphone and MO.19 Knife, in the cross-examination referred above, he has stated that he did not specifically point out the time and place of recovery and he was only stating the approximate information furnished by the Police. In short, the testimony of PW.10 Selvam does not inspire confidence and no reliance can be placed on it. The prosecution has failed to prove the only circumstance relied on by it to prove the guilt of the accused in the charges of murder and theft and there is practically no evidence adduced with regard to the charge of criminal conspiracy.

26. The trial Court has misdirected itself by wrongly appreciating the evidence on record and erroneously concluded that the prosecution has proved the charges against the accused. The conviction and sentence imposed on the accused are liable to be set aside.

27. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the Appellants/Accused Nos.1 to 3 in Sessions Case No.305 of 2007 on the file of Additional District and Sessions Judge, Fast Track Court No.III, Chennai are set aside and the Appellants/Accused Nos.1 to 3 are acquitted of the charges and the fine amount paid, if any, is to be refunded to them. The Appellants/Accused Nos.1 to 3 are directed to be released forthwith if their custody is not required in any other case. (C.N.J.) (M.J.P.J.) 12.10.2009 Index: yes. Internet: yes. vks To 1.The Additional District and Sessions Judge (FTC No.III), City Civil Court, Chennai-104.

2. -do- through the Principal Sessions Judge, City Civil Court, Chennai-104.
3. The Registrar, City Civil Court, Chennai-600 104.
4. The Inspector of Police, K1 Sembium Police Station, Chennai-600 011.
5. The Superintendent of Prisons, Central Prison, Puzhal, Chennai-600 066.
6. The Director General of Police, Mylapore, Chennai-600 004.
7. The District Collector, Singaravelar Maligai, V Floor, Rajaji Salai, Chennai-600 001.
8. The Public Prosecutor, High Court, Madras-104.
9. The Section Officer, Criminal side Section, High Court, Madras. C. NAGAPPAN, J.

AND M.JEYAPPAUL, J.

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