

Arumugham Vs. the State

Arumugham Vs. the State

SooperKanoon Citation : sooperkanoon.com/782643

Court : Chennai

Decided On : Nov-10-1992

Reported in : 1994CriLJ520

Judge : Janarthanam and;Thangamani, JJ.

Appeal No. : Crl. Appeal No. 1011 of 1986

Appellant : Arumugham

Respondent : The State

Advocate for Def. : S. Shanmughavelayutham, Addl. Public Prosecutor

Advocate for Pet/Ap. : R. Vijayakumar for ;K.N. Basha, Adv.

Judgement :

Janarthanam, J.

1. Accused 1, aggrieved by the conviction and sentence in S.C. No. 30 of 1986 on the file of Court of Session, Salem, came forward with the present appeal.

2. The brief facts are :-

(a) One Chithra, aged 9 (since deceased), was the daughter of P.W. 1, a resident of Selliyam Palayam, situate within the jurisdiction of Karippatti Police Station. Her father P.W. 1 is a mason, Her mother is P.W. 2. Her brother is by name Kadirvelu

alias Raja. The deceased and her brother, it is said, had been studying in the village school. P.W. 2's wife's sister's daughter is P.W. 3. She had been residing with her parents at Madras and studying there. Accused 1 is the elder sister's son of P.W. 1. P.W. 2 caused ear studs (M.O. 1 series) to be made for her daughter the deceased with the help of the goldsmith, P.W. 17, on conversion of an old jewel belonging to her mother-in-law.

(b) The deceased's brother Raja, it is said, had been to Sanarpatti to a house of his relation, obviously for spending his holidays there. Just like that, P.W. 3 had come to the house of the deceased during vacation to spend her time in the gay company of the deceased, some four or five days prior to 23-4-1985, the date on which the occurrence was said to have happened.

(c) Accused 1 and 2 are friends. At about 10 a.m. on the date of occurrence, they met each other in the thottam belonging to P.W. 11. During such meeting, they, it is said, conspired together to abduct the deceased for the purpose of committing the theft of the studs she used to wear. This conversation, P.W. 11 was stated to have overheard.

(d) On the morning of the day of the occurrence, as usual, P.W. 1, it is said, went out of the house in connection with his avocation. The deceased had been to school in the morning. P.W. 12 is a teacher. The deceased, it is said, wrote her examination at 3.30 p.m. and thereafter at 4.15 p.m., she left the school for home. Exhibit P. 11 is the copy of the attendance Register.

(e) P.W. 2, it is said, leaving P.W. 3 alone in the house went out to a nearby mill for grinding chilly for household purposes. The deceased, after the closure of the school, it is said, returned home and in the company of P.W. 3 taken papaya fruit, which was available in the house. At that time, accused 1, who is none-else than the sister's son of P.W. 1, it is said, visited the house. Accused 1 requested the deceased to procure some cigarettes from a nearby petty shop and so, the deceased, was said to have been given certain amount by accused 1 for such a purpose. Thereafter, it is said, accused 1 also went behind her.

(f) P.W. 2 returned to the house at 5 p.m. and enquired P.W. 3 as to the whereabouts of her daughter the deceased. P.W. 3 narrated what had happened. In the meantime, P.W. 1 also returned home. Since the deceased did not return home for quite long, P.Ws. 1 and 2 went in search of her. They came into contact with P.Ws. 4, 13 and 14 and enquired them as to whether they had seen their daughter the deceased. They appeared to have divulged to them that she was found in the company of accused 1 that evening. The movement of the deceased in the company of accused 1 was also stated to have been noticed by P.Ws. 5, 9 and 10.

(g) For two days, P.Ws. 1 and 2 made a hectic search and they could not trace the deceased. They did not want to keep quite any further and ultimately, they decided to lodge an information before Karipatti police station. P.W. 22 was the then Head Constable of Karippatti Police Station. P.W. 1 presented Exhibit P.1 at 1 a.m. on 25-4-1985 to P.W. 22 as to his missing daughter the deceased and the same was stated to have been registered as a case in Crime No. 146/85 as 'girl missing' Exhibit P. 24 is the printed F.I.R.

(h) P.W. 13 was stated to have accidentally met accused 1 at 5 a.m. on 26-4-1985. He appeared to have questioned him as to the whereabouts of the deceased. He, it is said, initially denied any knowledge as to the whereabouts of the deceased. When he was being questioned, P.W. 14 and some others also came there. In the meantime, P.Ws. 1 and 2, on hearing the news of the availability of accused 1 in the premises of P.W. 13 also rushed there. After persistent questioning, accused 1 was stated to have divulged that he along with accused 2 abducted the deceased to the sugarcane field of one Murugesan, throttled her to death there, removed the studs she was wearing and then pledged the same in a pawn shop at Ammapet.

(i) Thereafter, P.Ws. 1, 13, 14 and others also procured accused 2 and along with accused 1 and 2, they proceeded to the house of the village Administrative Officer by name Ulaganathan (since deceased), whose office is situate at Minnapalli, three furlongs away from the scene village. To him, P.W. 13, was stated to have given Exhibit P. 12 complaint. The village Administrative Officer, along with

accused 1, 2 and others, it is said, went to the sugarcane field of Murugesan and found the deceased lying dead. He then prepared yadhast, Exhibit P13. The village Administrative Officer, along with accused 1 and 2 accompanied by P.Ws. 13 and 14, it is said, went to Karipatti police station and produced accused 1 and 2 along with exhibits P.12 and P.13. P.W. 22, who was present then in the situation, on receipt of Exhibits P.12 and P.13 altered the case into one under Ss. 302 and 379, I.P.C. at 9 a.m. He prepared express reports and sent the same to the concerned officials. Exhibit P.25 is the altered express F.I.R.

He also sent messages through VHP to P.W. 23, Inspector of Police.

(j) P.W. 20 is the village menial, attached to the village administrative Officer, Ulagana-than, Since the said village Administrative Officer died prior to trial P.W. 20 had been examined to testify that Exhibits P.12 and P.13 were in the handwriting of the said village Administrative Officer.

(k) P.W. 23, on receipt of the 'Message, immediately rushed to Karippatti police station and took up further investigation of the case at 9.45 a.m. Accused 1 and 2, besides P.Ws. 13 and 14 were then available in the police station. He, along with them reached the sugarcane field of Murugesan at 10.30 a.m. After inspecting the scene, the prepared Exhibit P. 14 observation mahazar, attested by P.W. 15 and another. He drew Exhibit P.26 rough sketch of the scene. He caused photographs to be taken of the scene, in the backdrop of the body of the deceased, through the Police photographer, P.W. 21, M.O. 13 series are the photo prints. M.O. 14 series are the negatives. Between 11 a.m. and 2.30 p.m. he held inquest over the body of the deceased. Exhibit P.27 is the inquest report. During inquest, he examined P.Ws. 1 to 5, 9 and others. Since the body was in a highly putrefied state, he sent exhibit P.5 requisition through the Constable P.W. 8 for the conduct of the Autopsy at the spot.

(l) P.W. 23, it is said, arrested accused 1 at 3 p.m. in front of Velaiyappan temple at Selliampalayam in the presence of P.W. 15. On his arrest, he was stated to have given a voluntary confession under S. 27 of the Evidence Act. The admissible portion is Exhibit P.15. He also arrested accused 2 there and he was also stated to have given a confession under S. 27 of the Evidence Act, the

admissible portion of which is Exhibit P.16. Both the confessions had been attested by P.W. 15 and another.

(m) P.W. 7 was the then Assistant Surgeon, Government Hospital, Salem. On receipt of Exhibit P.5, he reached the scene at 4.30 p.m. and commenced autopsy over the body of the deceased. Exhibit P.8 is the postmortem certificate. He preserved the viscera and the same had been caused to be sent, on the requisition Exhibit P. 18 by P.W. 23, to the Assistant Director, Chemical Analysis Laboratory, Coimbatore-18 by the Judicial Second Class Magistrate No. IV, Salem, by his communication under Exhibit P.6 to the Duty Medical Officer, Government Head Quarters Hospital, Salem. Exhibit P.7 is the report of the Assistant Director and Assistant Chemical Examiner to the Goernment Regional Forensic Science Laboratory, Coimbatore, P.W. 23 in order to ascertain the cause of death issued a questionnaire under Exhibit P.9. Exhibit P.10 is reply sent by the doctor answering all the queries. On receipt of Exhibit P.7, the doctor P.W. 7 expressed the final opinion stating that death occurred more than 72 hours prior to postmortem and that the cause of death could not be ascertained due to the highly decomposed state of the body. After autopsy, the Constable P.W. 8 seized from the body M.Os. 2 to 5 Shirt, gown, blue colour ribbon and red colour ribbon and handed them, over at the Police station, which were seized under Form No. 95.

(n) At 6 P.M., P.W. 23 examined P.Ws. 10, 11, 13 and 14 and the village Administrative Officer Ulaganathan (since deceased). At 9 P.M., he along with accused 1 and 2 went to the pawn shop of P.W. 16.

He recovered from him M.O. 1 series-studs and M.O. 6 pawn chits under Exhibit P.17 mahazar attested by P.W. 15 and another. On 27-4-1985, he obtained the thumbs impression of accused 1 and 2. Exhibit P.20 series are the thumbs impressions of accused 1 while Exhibit P.21 series are the thumb impression of accused 2. He then sent them to court for the purposes of remand. He examined P.Ws. 1 and 2 at Selliyampalayam with reference to the studs M.O. 1 series. He also examined P.Ws. 12 and 17. Since accused 1 and 2 were in a mood to give a confession, he sent exhibit P.2 requisition to the Chief Judicial Magistrate, Salem on 28-4-1985. He also sent a requisition, Exhibit P. 19 to the Judicial Second

Class Magistrate No. IV, Salem for sending Exhibits P. 20 and P. 21 series the thumb impression of accused 1 and 2 respectively for comparison with the thumbs impression found in M.O. 6 in Finger Print expert.

(o) P.W. 6 is the Judicial Second Class Magistrate No. III, Salem. On receipt of Exhibit P.2 requisition from the Chief Judicial Magistrate, Salem on 30-4-1985, he caused a requisition to be sent to the Superintendent, Sub Jail, Salem or causing the production of accused 1 and 2 before him at 2.30 p.m. on 2-5-1985. Accordingly, both of them had been produced. After the administration of the warnings and taking necessary precautions, he was satisfied that accused 1 was in a mood to voluntarily give a confession. He did not record his confession immediately. He however gave him time for reflection for a day with a direction to the jail authorities that he should be kept in a separate cell and produced the next day, namely 3-5-1985. Exhibit P.3 is the first day's proceedings. Accused 2, after the administration of necessary warnings, did not however opt to give a confession. Accused 1 had been produced at 3.10 p.m. the next day and after administration of the usual warnings and taking the necessary precautions, he was satisfied that he was in a mood to voluntarily make a statement. He therefore recorded his statement in his own words. Exhibit P.4 is the compendium consisting of the second days' proceedings, confession of accused 1 and the certificate appended by him.

(p) P.W. 18 is the Head clerk attached to the Court of the Judicial Second Magistrate No. IV, Salem. On receipt of the requisition Exhibit P.18 from P.W. 23, Exhibit P.6 communication had been sent for the despatch of the viscera of the deceased to the Chemical Examiner for the purpose of analysis. As per requisition Exhibit P.19, M.O. 6 and Exhibits P.20 and P.21 series had been sent to the Finger Print Expert along with the office copy of the letter, Exhibit P.22.

(q) P.W. 19 is the Finger Print Expert, Office of the Superintendent of Police, Dharmapuri. He had given 'D1' and 'D2' marks to the two thumb impression found in M.O. 6. He also denoted the thumb impression of accused 2 as 'S'. He caused photoprints to be developed as respects M.O. 6 and Exhibits P.20 and P.21 series. M.Os. 7 and 8 are developed photo prints of the thumb impression marked as 'D1'.

M.Os. 9 and 10 are the developed photo prints of the thumb impressions marked as 'D2'. M.Os. 11 and 12 are the developed photo prints of the thumb impressions of accused 2 marked as 'S'. He compared the thumb impressions marked as 'D1' and 'D2' with the photo prints of the specimen thumb impression of accused 1 and 2. Such comparison, he would say, revealed that the thumb impressions marked as 'D2' tallied with the the specimen thumb impression, of accused 2.

The thumb impression marked as 'D1' could not be compared with the specimen thumb impression of accused 1, as the same was not legible. His report is exhibit P.23.

(r) On 14-5-1985, P.W. 23 examined P.W. 21. After completing the formalities of the investigation, he laid the final report under S. 173(2), CrI. P.C. before the Judicial Second Class Magistrate No. IV, Salem on 27-6-1985 against accused 1 and 2 for offences appeared to have been committed by them.

3. Learned Sessions Judge, upon committal, on perusal of the materials available on record, framed charges as against accused 1 and 2 for offences under Ss. 120-B, 302 read with 34 and 392, I.P.C. besides framing a specific charge under S. 364, I.P.C. as against accused 1 alone.

4. In proff of the charges, the prosecution examined P.Ws. 1 to 23, filed Exhibits P.1 to P.27 and marked M.Os. 1 to 14.

5. The accused when questioned under S. 313, Cr.P.C. as respects the incriminating circumstances appearing in evidence against them, denied the same. Accused, 1 would however state the reason for his making a judicial confession and according to him, he has stated before the Magistrate as tutored by the Police, as a consequence of the promise made by them to set free his parents detained in custody. They also marked Exhibit D.1 counterfoil of M.O. 6 and Exhibit D.2, the relevant entry in the ledger as relatable to the pawn chit, M.O. 6 bearing No. 3477. They did not choose to examine any witness on their behalf.

6. Learned Sessions Judge, on consideration of the materials available on record and after hearing the arguments of learned Public Prosecutor as well as learned

counsel for the defence, found accused 1 guilty under Ss. 364, 392 and 302, I.P.C., convicted him thereunder and sentenced him to rigorous imprisonment for ten years under S. 364, I.P.C. rigorous imprisonment for seven years under S. 392, I.P.C. and imprisonment for life under S. 302, I.P.C. with a direction that the sentences are to run concurrently. He would however acquit accused 1 of the offence under S. 120-B, I.P.C. besides acquitting accused 2 in respect of all the offences with which he stood charged. Hence the appeal by accused 1.

7. Learned counsle for the appellant-accused 1 would submit that the proved facts and circumstanes of the case cannot at all be stated to be of such a nature as to point out, in the cumulative and total effect irresistibly and unmistakably to the only conclusion that the accused 1 is guilty of the offences of which he had been convicted, that is, not only must the proved facts be compatible with his guilt but further they must be in their effect entirely incompatible with his innocence and must exclude every reasobale hypothesis consistent with his innocence and in such circumstances, there is no other go for this Court except to acquit him giving the benefit of resonable doubt.

8. Learned Additional Public Prosecutor would however counter the submission made by the other side.

9. The incriminating circumstances relied upon by the Court below for fastening or mulcting criminal liability upon accused 1 consists of the following :-

(1) The movement of the deceased in the company of accused 1 on the evening of the fateful day, as spoken to by P.Ws. 3 to 5, 9 and 10.

(2) The extra-judicial confession stated to have been made by accused to P.W. 13, who, in turn was stated to have made his report exhibit P. 12 to the village Administrative Officer Ulaganathan (since deceased).

(3) The arrest, confession and S. 27 (of the Evidence Act) discovery of P.W. 16, from whom M.O. 6 and M.O. 1 series had been recovered.

(4) The judicial confession stated to have been made by accused 1 to the Judicial Second Class Magistrate No. III, Salem, P.W. 6 that is to say, Exhibit P.4. The

medicial testimony available on record in the shape of the testimony of the doctor P.W. 7 coupled with the post-mortem certificate, Exhibit P.8.

10. It goes without saying that each of the various circumstances, as stated above, has to be clinchingly established by the prosecution. If they do so, the further question that would arise for consideration is as to whether those proved circumstances are adequate and sufficient, as had been pointed out by learned Counsel for accused 1, appellant to point out that accused 1 and he alone, was responsible for abducting the deceased, murdering her by throttling and removing the studs she wore on her cars on the fateful day in question.

11. Let us now make an endeavour to sift the materials available on record. It is the case of the prosecution that the accused, after attending the school on the day of the occurrence, returned home in the evening after the school hours and was in the company of P.W. 3 eating papaya fruit and only at that juncture, it is said, accused 1, who is none else than the aunt's son of the deceased visited the house and required the deceased to purchase some cigarettes from a nearby petty shop to quench his thirst of smoking, by providing necessary money therefor. The deceased, accordingly, was stated to have gone to effect to purchase of the cigarettes. Immediately the accused was also stated to have followed the deceased. Subsequently, the accused was stated to have been seen in the company of the deceased by P.Ws. 4, 5 9 and 10. Even if the evidence of all those witnesses are taken for granted as gospel truth, we fear that such a circumstances can, by no stretch of imagination, be stated to point out in criminality or guilty mind on the part of accused 1. After all, as stated, he is aunt's son of deceased. There is nothing wrong for the deceased to have moved in the company of accused 1, in such a situation. It is not as if the deceased was found in the company of accused 1 in a forlorn and forsakon place. After all, they were seen together in the broad daylight in the streets of the village they lived. It is not at all the case of the prosecution that accused 1 was found in the company of the deceased, during dusk time at or about the place where the body of the deceased was found. He had had been found in such a place and he alone returned and subsequently the deceased was found in such a place, there is every plausibility of construing such a circumstances to be of some significance of an incriminating nature pointing out

some aspect of criminality on the part of accused 1.

12. We are of the opinion that the deceased, stated to have been found in the company of accused 1 on the evening of the relevant day in question, cannot be given any weight and credibility, on the face of the evidence of P.W. 4, who would say that on the evening of the day of the occurrence at about 6 or 7 PM, he was contacted by P.Ws. 1 and 2, parents of the deceased of whom P.W. 2 told him that the deceased, who went to school did not at all return home and whether he had seen the deceased anywhere. If really the deceased had returned home and subsequently the deceased had been taken from the home by accused 1 under the facade of purchase of cigarettes, as deposed to by P.W. 3, from whom alone P.Ws. 1 and 2 came to possess such knowledge, there is no reason for P.W. 2 to have told P.W. 4 that her daughter the deceased, who went to school in the morning, did not at all return home. It is thus clear that the deceased, who had been to the school in the morning, did not at all return home and was found missing.

13. Pertinent it is to note at this juncture that P.W. 3 is after all a child witness aged 8. No doubt, *voire dire* has been done by the Court below to satisfy itself as to whether she was in a position to understand and sift the truth and falsehood. Though he cannot be stated to be having any sort of an animus as against accused 1, yet we are of the view that her evidence is not above reproach and beyond suspicion, in the circumstances of the case. She had candidly admitted during the course of her cross-examination that the police tutored her earlier before her production before Court for the purpose of giving evidence and she in fact deposed to in Court as tutored by the police. In such state of affairs, we are not at all impressed either with the evidence of P.W. 3 or of the other witnesses, namely, P.Ws. 4, 5, 9 and 10 as respects the proof of the so-called incriminating circumstance of the deceased moving in the company of the accused on the evening of the day of the occurrence and therefore, no safe reliance could be placed upon their testimony.

14. It is not as if accused 1, with a view to unburden his mind after the alleged commission of the heinous crime of murder of a tender child - the deceased,

approached P.W. 13 and divulged the circumstances under which the murder had happened. The sordid fact is that he had been sighted by P.W. 13 on the early morning of 26-4-1985, so to say, at 5 a.m. and the moment he sighted him, the first question he put to him was, 'what had happened to the deceased. He in fact tried his level best, by feigning ignorance about the same, P.W. 13 however would not leave him but go on persistently pressurising him by putting questions. In such process, not only P.W. 14 but also P.Ws. 1 and 2 and others in the village gathered there. Only in such an atmosphere of persistent questioning, he was stated to have made an extra-judicial confession to P.W. 13. Even in the so-called revelation he had made, he not only tarred, himself but also tarred accused 2 with the same brush, in the sense of implicating himself and accused 2 in abducting the deceased, murdering her by throttling and removing the studs she wore and pledging the same with a pawn shop at Ammapet. The surrounding circumstances, which impelled him to make a confession to P.W. 13 are such that but for his saying something as to his and his friend-accused 2 having a hand in the crime, there was every bleak possibility for him to escape from the clutches of P.W. 13 and others. The way in which P.W. 13 started questioning accused 1 is suggestive of the fact that he and others had already prejudged the matter as if accused 1 and his friend-accused 2 were having a hand in the crime and towards that direction, a confession through the mouth of accused 1 had been extracted. It is but natural for a person like accused 1 to have expected some sort of a harm to him but for making a confession of the sort expected of him by P.W. 13 and others. It is also to be pointed out here that the judicial confession under Exhibit P.4 would reveal the complicity of accused 1 alone and the truth and genuineness of the same, we will consider a little later. The so-called extra-judicial confession thus in our view cannot but be one made to come into existence under pressure and in this view of the matter, we have no hesitation in not placing any reliance on the extra-judicial confession so made by accused 1 to P.W. 13.

15. The arrest, confession and consequent recovery, in the facts and circumstances of the case, did not at all inspire confidence. It is the case of the prosecution, as unfolded by P.Ws. 13 and 14 that both accused 1 and 2, along with Exhibits P.12 and P.13 had been produced before P.W. 22 at 9 a.m. on 26-4-1985. Despite such production, P.W. 22 would not at all opt to arrest them and to

say otherwise he would not even demur as to what he had done as respects their custody. It is also agonising to note that though P.W. 23 had stated that he had seen accuseds 1 and 2 in the police station along with P.Ws. 13 and 14, yet he would not also state that they were taken from the police station to the place of occurrence. He would however state that he arrested accused 1 in front of Vellaiyappan temple. Selliyampalayam at 3 p.m., besides arresting accused 2 at 4.30 p.m. there. It is only on such arrest, he would say, they would respectively give the confession under S. 27 of the Evidence Act, the admissible portions of which are Exhibits P.15 and P.16. Despite stating so, it has to be noted that the very same Inspector, namely, P.W. 23 sent Exhibit P.2 requisition to the Chief Judicial Magistrate, Salem requesting him to suitable directions to the concerned Magistrate to record confession under S. 164, Cr.P.C. and in such a requisition he would state that both the accused were caught by the villagers and the body of the deceased had been traced, apart from stating that they had been arrested subsequently by him at 3 p.m. on 26-4-1985 at Minnampalli and their confessions had been recorded and the ear-studs stolen by them were recovered. If we consider the evidence of P.W. 16, to whom M.O. 1 series-studs were stated to have been pledged by accused 1, the theory of recovery of M.O. 1 series-studs pursuant to the confession given by accused under S. 27 of the Evidence Act would be given a death-knell.

16. The evidence of P.W. 16 reveals that P.W. 23 had contacted him earlier and shown the pawn chit, M.O. 6 and enquired him whether the jewels covered by M.O. 6 were available with him. His evidence would further reveal that the pawn chit, M.O. 6 had already been given to him by P.W. 23. It is only thereafter P.W. 23 was stated to have taken accused 1 and 2 to the pawn shop of P.W. 16 and recovered M.O. 1 series. In such a circumstances, we are of the view that the arrest, confession and recovery of M.O. 1 series from P.W. 16 is a stage-managed show to suit the exigencies of the case of the prosecution and nothing less. If P.W. 16 had already been contacted by P.W. 23, it is well-nigh possible for him to have recovered M.O. 1 series. It is not as if P.W. 23 discovered M.O. 6 pursuant to the confession under S. 27 of the Evidence Act made by accused 1 or accused 2. It is rather a riddle or a puzzle as to how P.W. 23 came to be in possession of M.O. 6 before ever he contacted P.W. 16.

17. Apart from these things, if Exhibit D.1 - counterfoil of M.O. 6 - is perused, with a little bit of care, and caution, so many interesting details exposing the ugliness taking shelter under the case of the prosecution would get revealed. In M.O. 6, the name of the person who pledged the jewel covered by it is stated therein as 'Chinnakkannan alias Arumugham'. The name 'Chinnakkannan' is written in a handwriting different from the words, and also with a different ink. When P.W. 16 had been confronted with the same, he would say that the name 'Chinnakkannan' had been written by his accountant and later on, he wrote the words, Underneath M.O. 6, two thumb impressions are affixed. The thumb impression on the left hand side is stated to be the thumb impression of accused 2 - Anbalagan as the person, who introduced accused 1, pledger for pledging the jewel. The thumb impression on the right hand side is stated to be that of accused 1. The description of the thumb impression of accused 1 is stated as 'Chinnakkannan Arumugham'. The name 'Chinnakkannan' is written by the accountant, as admitted to by P.W. 16 and the words were written by P.W. 16. If we peruse the counterfoil, Exhibit D.1, we are unable to find anything written there to find out to whom the thumb impression on the left hand side belongs while the thumb impression on the right hand side is stated to be belonging to one 'Chinnakkannan', with having an alias name. It is thus clear that some tampering had been done with the pawn chit book maintained by P.W. 16, obviously to make it appear that the jewels had been pawned to P.W. 16 under M.O. 6 and Exhibit D.1 had been made by accused 1, as introduced by the surety-accused 2.

18. Certain other startling factors are also available, as revealed by the inquest report, Exhibit P.27. Column 15 of the report points out A to Z of the prosecution case, inclusive of the pledge of the jewels by accused 1 and 2 with P.W. 16. It is to be remembered here that the inquest had been held between 11 a.m. and 2.30 p.m. on 26-4-1985. The arrest of accused 1 and 2, as stated earlier, had happened at 3 p.m. and 4.30 p.m. and thereafter, only S. 27 (of the Evidence Act) confession statements had been recorded and in pursuance of the confession statements, the jewels, M.O. 1 series pawned to P.W. 16 had been recovered at 10 p.m. In such state of affairs, we are at a loss to understand as to how it was feasible for the investigating agency to be in a position to pen down in column 15 of the inquest report, Exhibit P.27, as to the pledging of the jewels M.O. 1 series

with P.W. 16.

19. Top of all, the thumb impressions of accused 1, stated to have been affixed by him on M.O. 6 and Exhibit D.1 are not at all tallying with his specimen finger prints as stated by the Finger Print Expert, P.W. 19. In such circumstances, we are unable to believe the case of the prosecution as respects the arrest, confession and consequent recovery, as unfolded by the testimony of P.Ws. 15, 16 and 23.

20. The other piece of incriminating circumstance is the one revealed by the judicial confession Exhibit P.4. Accused 1 however had retracted the same. The reason given for retraction of such a confession, as stated earlier, was that he made the confession on the lines indicated by the police on the premise made by them that if he did so, his parents would get released from their custody. Unless such a confession is found to be true and genuine, the same cannot at all be acted upon. We have to note at this juncture that P.W. 23 had given Exhibit P.2 requisition that both accused 1 and 2 were in a mood to voluntarily make a judicial confession to the Chief Judicial Magistrate, Salem requesting him to make arrangements for recording of such confessions. It is perhaps to toe in line with the extra-judicial confession earlier stated to have been made by accused 1, implicating himself as well accused 2, there had been an attempt by the prosecuting agency to procure a confession from both accused 1 and 2. Though accused 1 made a confession, yet accused 2 did not at all make any such confession. Both accused 1 and 2 had been produced before the Magistrate, P.W. 6 on one and the same day and on that date, accused 1 was in a mood to give a confession while accused 2 was not consequently, the Magistrate gave time for reflection to accused 1 for a day with a direction that he be produced the next day for his confession to be recorded. When accused 1 was produced the next day, quite contrary to what he had stated before P.W. 13, he would state that he alone was responsible for the abduction, murder and removal of the jewels from the deceased - thus, giving a clean chit to accused 2. This is indicative of the fact of some extraneous pressure brought to bear upon him to get himself implicated alone, leaving accused 2, who was not prepared to make a judicial confession. It is highly probable that in the situation that accused 1 had been placed, to toe in line with such pressure, he chose to make a confession as expected of from him. As

such, we are of the view that the confession of accused 1 cannot be stated to be voluntary in the circumstances of the case. Once such a confession is found to be involuntary, the other question as to its truth and genuineness will not arise for consideration at all. Further, such a retracted confession, even if held to be voluntary, true and genuine, cannot take us anywhere, inasmuch as there are no materials whatever relatable to corroboration in general particulars.

21. Top of all, the medical evidence available on record is not at all serving as a lending assurance factor to the theory of the prosecution that the deceased was done to death by throttling. The medical evidence on record reveals that the body of the deceased was highly in a putrefied state and the hyoid bone was in tact and the doctor was unable to find any trace of throttling on the body of the deceased and the reason for such a thing, he would state that since the body was in an extremely putrefied state, he could not decipher as to the exact cause of death and that perhaps was the reason he preserved the viscera and sent the same to the Chemical Examiner. After obtaining the report of the Chemical Examiner, he would categorically opine that he was unable to give any opinion as to the cause of death. As such, the medical evidence available, on record, we are of the view, is not in any advancing the case of the prosecution to any extent whatever.

22. In view of what has been stated above, we are of the view that the prosecution miserably failed in establishing the various circumstances of incriminating nature and in such circumstances, there is no other go except to acquits accused 1 also by giving him the benefit of reasonable doubt.

23. In the result, the appeal is allowed; the conviction and sentence as imposed on accused 1 by the Court below for various offences are set aside and he is acquitted. He is ordered to be set at liberty forthwith, unless he is required in connection with any other case.

24. Appeal allowed.