

Sankarapandian and Others Vs. State

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Court : Chennai

Decided On : Jul-29-1992

Reported in : 1992CriLJ3662

Judge : K.M. Natarajan and; N. Arumugham, JJ.

Appeal No. : Criminal Appeal No. 316 of 1985

Appellant : Sankarapandian and Others

Respondent : State

Advocate for Def. : Mr. S. Shanmughavelayutham, Additional Public Prosecutor

Advocate for Pet/Ap. : Mr. Abdul Ghani, Adv.

Judgement :

Arumugham, J.

1. All the four appellants were tried for the offence punishable under section 302 read with S. 34, I.P.C. under the first charge and for offence punishable under Section 201, I.P.C. under second charge by the learned Second Additional Sessions Judge, Trinelveli in Sessions Case No. 211 of 1984 on the allegation that on the night of 11-10-1983 near Tuticorin V.O. Chindambaranar College Students Hostel appellants 1 to 4 with the common intention of causing the death of one Rajendran son of Thangaraj Nadar of Briant Nagar, Tuticorin took him, murdered

him by cutting and stabbing with deadly weapons and after committing the murder, with a view of escape from the punishment for the offence of murder separated the head of the deceased Rajendran from his body and buried the same in sand near Kamaraj College, Tuticorin. After elaborate trial, the learned Second Additional Sessions Judge found the appellants guilty on both the charges and convicted and sentenced them to undergo imprisonment for life for the offence under section 302 r/w. S. 34, I.P.C. and rigorous imprisonment for 3 years for the offence under Section 201, I.P.C. and ordered that the sentences to run concurrently. This appeal has been preferred by the appellants against their conviction and sentence.

2. The prosecution case as recorded before the learned trial Judge is in brief as follows :

P.W. 2 Sarojini married the deceased Rajendran about 4 months prior to his death and from that day onwards she was residing with the deceased at Sivankoil Street. P.W. 1 Valliammal is the aunt of the deceased Rajendran. Prior to the occurrence, the deceased Rajendran was beaten by the associates of Anthonyappan and consequently he was in the hospital for about a month. During that time, P.W. 2 was residing in her sister's house at Palayamkottai out of fear. After the deceased Rajendran was discharged he brought P.W. 2 and resided in Krishnammal Compound in Briant Nagar. About 10 days prior to the occurrence while the said Rajendran was returning after witnessing a cinema, he was inflicted with injuries by hurling bomb upon him by Mariappan group and consequently he was admitted again in the Government Hospital and he was by then attended by P.Ws. 1 and 2 for help. During the time A1 used to come to the hospital and see the deceased. After the discharge from the hospital, he came to his house situated within the compound of Krishnammal and A1 met him there also. The house in which Rajendran was living belonged to the father-in-law of P.W. 6 Pandi. P.W. 6 was working in the Port Trust and he married Lakshmi the daughter of his house owner. As the father-in-law of P.W. 6 expired, P.W. 6 Pandi and his wife Lakshmi came and stayed in that house for about 16 days. The house of the deceased Rajendran and the house where P.W. 6 and Lakshmi were residing were within the same compound.

3. Before P.W. 6 married the said Lakshmi, she was having connection with A1 and after her marriage she did not have connection with A1. A1 used to visit the house of Rajendran very often which was not liked by Lakshmi and it was followed by P.W. 6 asking the deceased Rajendran not to allow A1 to come to their house and even so if he visits, he asked Rajendran to vacate his own house. On a Sunday prior to the occurrence when A1 visited the house of the deceased Rajendran P.W. 6 asked him not to come to his house for which A1 took a gun and attempted to shoot P.W. 6. Deceased Rajendran intervened and pushed A1 outside. It was followed by a warning by A1 that there would be a clash between him and the deceased. So saying A1 left his house.

4. This was the backdrop that happened as claimed by the prosecution prior to the occurrence through the evidence of P.Ws. 1, 2 and 6.

5. The following Tuesday at about 7 p.m. when P.Ws. 1 and 2, namely the aunt and wife of the deceased Rajendran were in their house along with the deceased, A1 to A3 came there and invited Rajendran to attend the 'mandagapadi' which as being celebrated in a nearby temple. Deceased Rajendran did not accept because he was not doing well. Even so, the appellant/A1 to A3 insisted that after the 'mandagapadi' was over in the said temple, they would bring Rajendran to his house. On the said assurance, they took the deceased. P.Ws. 1 and 2 claim further, that during the whole of the said night, the said Rajendran never returned to his house.

6. P.W. 3 Sivanpandian, a resident of Briant Nagar, conducted 'Mandagapadi' festival in the Sandhana Mariamman temple on 11-10-1983. He claims that he saw the deceased Rajendran with A1 and A2 at the dais of 'villupattu' performance. P.W. 4 Muthuvel, an employee of arrack shop number 8, situated in Briant Nagar, claims that at about 10.30 p.m. on 11-10-1983, A1 to A4 along with Rajendran, came to his arrack shop and A1 and Rajendran consumed brandy which they brought and the other accused consumed arrack in his shop. P.W. 5 Subramanian claims that he knew the accused and that on a Tuesday at about 12 midnight, when he came out of the house to pass urine, he saw A1 to A4 with Rajendran proceeding from east to west and during that time A2 and A4 were

having swords M.Os. 7 and 8.

7. At about 6 a.m. on the next morning, when P.W. 1 and P.W. 2 were in their house, they got information that one dead body was lying near the V.O.C. College and on going there, they saw a trunk of a human body lying. P.Ws. 1 and 2 identified that the said trunk was that of Rajendran and upon which, they found blood-stained shirt M.O. 1 blood-stained dhoti M.O. 2 and blood-stained trousers M.O. 3. P.W. 1 reached South Police Station, Tuticorin at about 6.30 a.m. and gave a complaint Ex.P. 1 to P.W. 10, the then Sub-Inspector of Police, who was on duty which was registered in Tuticorin South Police Station Crime No. 1472/1983 against A1 to A3 under section 302, I.P.C. P.W. 10 prepared express report Ex.P. 9 and sent it to the Judicial Magistrate, Tuticorin and to his superior officers. P.W. 16, on getting the information through telephone about this case at about 7.30 a.m., reached the Police Station by 7.45 a.m. and got copies of F.I.R. and took up investigation in this case. He reached the scene where the headless body was lying by 8 a.m. and prepared Ex.P. 2 observation mahazar, in the presence of P.W. 8 and a rough sketch Ex.P. 26. After making arrangements to search for the severed head, he conducted inquest on the trunk between 12 noon and 2 p.m. in the presence of panahcyatars and during inquest, he examined P.Ws. 1, 2, 3 and 4. He prepared inquest report Ex.P. 27.

8. He sent the trunk through P.W. 13, P.C. 1177 Muthiah, for post mortem with requisition Ex.P. 21. P.W. 13 escorted the trunk of the dead body, reached the Government Hospital, Tuticorin, by 2 p.m. on 12-10-1983 and handed over the same for autopsy to P.W. 14. P.W. 14 Dr. John Norman conducted autopsy over the trunk of the dead body at about 4.15 a.m. on that day and found the following injuries :

- 1) The head of the said individual was found missing and was totally severed off at the root of the neck. Hence the accurate identity of the individual was in question.
- 2) An incised wound about 1 1/2' x 1' x 1' over the medial and front of right wrist.
- 3) An incised wound about 1 1/2' x 1/2' x 1' over the left side of sacrum above the left buttock.

4) Contused abrasions with bruises about 2' x 1/4' x hardly skin deep about in number on the front of left shoulder and left wrist.

On dissection, he found all the internal organs normal in position and weight but pale in section. Since the head was severed from the trunk the vertebra was preserved probably C6 or C7. He issued the post mortem certificate Ex.P. 22. On the basis of the injuries seen by this Doctor, he opined that the person of the said trunk would have died of severing of the head from the body and death would have occurred about 16 to 18 hours prior to his post mortem examination.

9. P.W. 13 after escorting the trunk during autopsy recovered M.Os. 1 to 3 from the trunk. He handed over the body to the relatives. He handed over M.Os. 1 to 3 to the Police Station.

10. At about 2 p.m. on the same day P.W. 16 the Inspector of Police recovered blood-stained earth M.O. 15, sample earth M.O. 16 and hair M.O. 14 under mahazar Ex.P. 3 attested by P.W. 8 and examined P.W. 6 P.W. 8 on the same day. On the next day he examined P.W. 5 and P.W. 7. P.W. 7 Arumughasamy would have it that he used to wash the clothes of deceased Rajendran and identified M.O. 2 as belonging to deceased Rajendran with the identification mark 'T.R.' English letters. P.W. 16 recovered M.O. 9 Coconut (sirattai), Mixture M.O. 10 and M.O. 11 tablets under mahazar attested by P.W. 8 on 14-10-1983 at about 12 noon in a road leading to Veeranaickan thattu situated in Thiruchendur road at a distance of about one furlong, P.W. 16 arrested A1. A1 volunteered a statement, admissible portion of which is Ex.P. 4 A1 took P.W. 16 and P.W. 9 to his house and produced M.O. 13, a country gun with M.O. 14 cartridge which were concealed near a tin box kept in the north western corner of his house. They were recovered under Ex.P. 15 in the presence of P.W. 9. Then A1 took P.W. 9 and P.W. 16 to the Sandhana Mariammal temple compound and produced M.O. 7 and M.O. 8 swords which were buried in the ground along with M.O. 6 shirt. They were recovered under mahazar Ex.P. 6 attested by P.W. 9. P.W. 16 gave information to P.W. 15 the Tahsildar and on his arrival to South Police Station by 3 p.m. on that day, A1 took P.W. 9, P.W. 15 and P.W. 16 to a sandy elevation near Tuticorin Kamraj College. He dug up from a place and produced before the witnesses the

severed head of a male. P.W. 16 prepared observation mahazar Ex.P. 7 in the presence of P.W. 9 and P.W. 15. P.W. 15 conducted inquest over the severed head and prepared inquest report Ex.P. 25. P.W. 16 recovered M.O. 4 muffler, M.O. 5 kaili which were found upon the severed head under mahazar Ex.P. 8 duly attested by the witnesses. Then he examined other witnesses. On the next day on 15-10-1983 he sent A1 for judicial custody. P.W. 16 gave a requisition for sending M.Os. 1 to 8 and 15 for chemical examination. Ex.P. 19 is the report from the chemical examiner. Ex.P. 20 is the report of the serologist, in which human blood was detected on M.Os. 1 to 5.

11. Then on the requisition P.W. 15 Dr. John Norman visited the place at about 5.15 a.m. on 14-10-1983 where the severed head was recovered. He conducted autopsy over the severed head and he noted the following injuries :

1. An incised wound of 5' x 3' x 2' over the centre and back of the neck.
2. An incised wound of 6' x 2 1/2' x 1 1/2' over the right side nose of the neck.
3. An incised wound about 6' x 2 1/2' x 1 1/2' over the left occipital region extending towards the centre near the left ear.
4. An incised wound about 4 1/2' x 1' x 1' over the left mastoid region just below the left ear.
5. An extensive cut injury about 9' x 3' x 3' over the right of the skull about the ear extending from the temporo occipital region closer to the right eye.
6. An incised wound about 2' x 1 1/2' x 1 1/2' over the left side of lower jaw.
7. An incised wound about 2' x 1 1/2' x 1 1/2' over the right side of lower jaw.

He also found that the hyoid bone was intact, teeth complete, brain matter liquified and came out when membranes were cut. According to him, death would have occurred 34 to 44 hours prior to the post-mortem of the exhumed head. He preserved the lower end of the vertebra attached with the head and the hairs. He further opined that the concerned person would have died due to the severing of the head from the body. He issued Ex.P. 23 post-mortem certificate.

12. P.W. 16 came to know that on 19-10-1983 A2 surrendered before Judicial Second Class Magistrate, Thiruchendur, and A3 surrendered before the Judicial Second Class Magistrate, Trinelveili on 22-10-1983. He arrested A4 at about 6 a.m. On 27-10-1983 and sent him to judicial custody.

13. P.W. 11, the Court Assistant of the Judicial Second Class Magistrate Court, Tuticorin would have it that on 14-10-1983 he received Ex.P. 10, requisition given by P.W. 16 to compare the severed head exhumed by P.W. 15 with the bone preserved by P.W. 14 with that of the bones found on the body. The same were sent for chemical examination by the learned Magistrate under Ex.P. 11. Ex.P. 12, the report was received. According to the report, bones of both the head and trunk were found to be one and the same. On Ex.P. 13, requisition to send M.Os. 13 and 14 for chemical examination, they were sent and Ex.P. 15, report was obtained. Upon Ex.P. 16 requisition, M.Os. 1 to 8 and 12 were sent for chemical examination by the learned Magistrate under Ex.P. 17. Ex.P. 19 was the report of the chemical examiner and Ex.P. 20 was the report of the serologist. According to it, in M.Os. 1 to 5 human blood was detected.

14. P.W. 12 Constable, attached to South Police Station, would have it that on 12-10-1983 at about 7.45 a.m. he received the first information report and handed over the express report to the Magistrate by 10 a.m. on that day. He also handed over the express F.I.R. to the higher authorities.

15. On completion of investigation, on 30-11-1983 P.W. 16 laid charge-sheet against all the appellants for the offences punishable under section 302 r/w. S. 34, I.P.C. and filed a separate charge-sheet against the first accused (A1) for having possessed country gun and bullets.

16. When the accused were examined under section 313, Cr.P.C. with regard to the incriminating circumstances appearing against them, in evidence they denied their complicity in the crime. A1 has further stated that one Anthoniappa joined with P.W. 2 and committed this murder but the case had been foisted against him. He has produced 5 documents before the trial Court but he has stated that he has no witnesses to be examined on his side. A2 and A3 have stated that since they were wanted by the Police, they surrendered before the Court and that they had

no witnesses to be examined on their side. A4 has stated that he was taken from his house and a false case had been foisted against him. He has also stated that he has no witnesses to be examined on his side.

17. On assessing the entire evidence, both oral and documentary, tendered by the prosecution against the accused, the learned trial Judge found all the appellants guilty for the charges framed against them and accordingly convicted and sentenced them as already referred.

18. We have heard the arguments advanced, on behalf of the appellants herein by Mr. Abdul Ghani. He submitted firstly that the evidence of P.Ws. 1, 2 and 6 are unreliable, bristles with every improbabilities and that therefore, it is quite unsafe to sustain a conviction on the basis of their oral testimony; secondly, since there is no direct or occurrence witnesses in this case, the prosecution rests purely upon the circumstantial evidence by examining P.Ws. 1 to 6 which is vulnerable and cannot be accepted for there are serious infirmities and it lacks cogency, connecting link and the chain of sequences and events in proving the complicity of the accused in committing the murder of the deceased Rajendran; thirdly, that the recoveries claimed by the investigating agency as well as the confession statement alleged to have been given by A1 has not been proved by acceptable evidence and lastly that in the absence of the chain and link of circumstances to be established assumes every importance in the context that deceased Rajendran had several enemies to do away his life and that as such, only on their instigation, the case against the appellants was foisted at the behest of P.W. 2 and one Anthonyappa.

19. Mr. S. Shanmughavelayutham, learned Additional Public Prosecutor, countered every one of the contentions of the learned Counsel for the appellants by submitting that the evidence of P.Ws. 1 to 6 clinches the circumstances which have been clearly established that prior to the occurrence on the night of 11-10-1983, deceased Rajendran was found in the company of the appellants herein at different places and at different times and that even so, the evidence of the above witnesses can be safely relied upon the nothing has been elicited to discredit or suspect their evidence; secondly that though no direct evidence is available to prove the guilt of the accused in this crime, it has been established by the chain of

circumstances which had a complete link with the accused/appellants and their complicity in doing away with the life of the deceased, supported by medical evidence; thirdly, that the recoveries of the severed head and material objects at the behest of A1 after his arrest clearly renders support to the circumstances established by the prosecution as to the occurrence on the night of 11-10-1983; fourthly, that inasmuch as there are no serious lapses or laches on the part of the investigating agency, the prosecution has made out a case against the appellants in committing the homicidal violence of murdering the deceased Rajendran on the night of 11-10-1983.

20. We have meticulously perused the evidence of P.Ws. 1, 2 and 6 which constitutes the first circumstance, during which the deceased Rajendran was found along with A1 to A3. It was the strenuous claim of P.Ws. 1 and 2 that while they were in their house along with the deceased Rajendran on the evening of 11-10-1983 and Rajendran was not doing well, A1 to A3 came to their house, insisted Rajendran to come and attend 'mandagapadi' festival which was going on in Sandhana Mariammam temple situated near Briant Nagar. In spite of his refusal and hesitation, A1 to A3 persuaded him and took him by assuring that they would bring him after the festival was over. This was witnessed by P.W. 6 who was residing with his wife Lakshmi at that time in the same house though separately. It is an undeniable fact that the deceased Rajendran with his wife P.W. 2 and his aunt P.W. 1 were living in a house which belongs to the mother-in-law of P.W. 6 and where he was living with his wife Lakshmi. Therefore, it is quite natural for P.W. 6 to notice the departure of A1 to A3 with deceased Rajendran on the evening while he was returning to his house after the work. P.Ws. 1 and 2 have not pretended claiming extra overtacts against A1 to A3. They never claim or attribute any extra act perpetrated either upon them or towards deceased Rajendran. They admit that on two prior occasions, the deceased was attacked by the servants of one Anthoniappa as well as that of the attack of Mariappan group by hurling bomb and so on and for which Rajendran underwent treatment in the hospital. After discharge from the hospital, both of them were residing along with the deceased in their house.

21. It is the claim of the prosecution that the visit of A1 to the house of the deceased Rajendran was protested by the wife of P.W. 6, because both had previous intimacy prior to the marriage with P.W. 6 and that after the marriage there was no connection of any kind between the wife of P.W. 6 and A1. P.W. 6 frankly admits that having known the previous intimacy of his wife with A1, he married her and that afterwards, she had no connection of any kind with him. It is quite natural for A1 to have visited the house of deceased Rajendran frequently to renew his intimacy with the wife of P.W. 6 which was duly hated by her. Upon her persuasion, P.W. 6 warned the deceased not to allow A1 to visit his house and that if not, the deceased had to vacate the house. The claim of P.Ws. 1 and 2 to the above aspect is consistent, convincing, natural and probable and it has not been controverted by A1. It was the claim of the witnesses P.Ws. 1, 2 and 6 that immediately prior to the occurrence day, when P.W. 6 directly warned A1 not to visit his house, he took a country gun and attempted to shoot him. It was intercepted by the deceased Rajendran and Rajendran pushed him outside the house. For this, it was the claim of the prosecution that A1 had warned the deceased that if he intervened, then there would be a direct clash between him and the deceased Rajendran.

22. Though the learned Counsel Mr. Abdul Ghani drew our attention to the diverted antecedent married life of P.W. 2 in marrying the deceased Rajendran and living with him and P.W. 6 in marrying the said Lakshmi after having come to know that she had connection with A1, their conduct clearly belies their version and that therefore, their testimony cannot be accepted. On perusal of their evidence, we are fully satisfied to hold that the oral testimony of P.Ws. 1, 2 and 6 is quite natural, cogent, convincing and can be safely accepted for the simple reason that P.W. 2 claims that she is the wife of the deceased Rajendran and living in a rented house and P.W. 1, aunt of the deceased was living with them for rendering all help. The not-too-happy antecedents in the married life of P.W. 2 as well as that of P.W. 6 have no bearing with regard to the first circumstance and the backdrop of the family of P.Ws. 1, 2, 6 and deceased Rajendran pertaining to the first circumstance namely that the deceased Rajendran was in his house along with P.Ws. 1 and 2, A1 to A3 came and took Rajendran at about 7 p.m. on 11-10-1983 under the pretext of attending 'mandagapadi' festival being held on that day at

Sandhana Mariammal temple situated near Briant Nagar.

23. That apart, the learned Counsel for the appellant also contended that there is no sufficient motive for all the appellants to commit the murder of deceased Rajendran and that therefore, the case of the prosecution cannot be accepted. To substantiate this contention, the learned Counsel pointed out that A1 was frequently visiting the house of the deceased and was in cordial terms with him. Under such circumstances, it is highly inconceivable for A1 to have done away with his life. But it is the cogent and sustained claim of P.Ws. 1, 2 and 6 that because of the frequent visits of A1 to the house of deceased which is situated nearby the house of P.W. 6 and in the context of the prior intimacy of A1 with the wife of P.W. 6, she disliked his visit, followed by the warning by P.W. 6 to the deceased not to allow A1 to come again and that even so, A1 visited the house of deceased and there was a direct wordy altercation between A1 and P.W. 6 which resulted in A1 taking a country gun and attempting to shoot P.W. 6, which was prevented by the interception of the deceased and A1 was pushed outside, immediately prior to the day of occurrence which ended with the warning of A1 that there would be direct clash between him and the deceased. This aspect of the backdrop in our clear view forms the motive for A1 and the other accused to have formed a common intention against the deceased Rajendran. Even otherwise, adequacy of motive for committing a crime by the accused or its options or failure to establish is not a ground by itself to reject the case of the prosecution relating to a crime committed, provided the other aspects of the case directly constitute the guilt of the accused in committing the offences. Therefore, analysing the evidence of P.W. 2 and P.W. 6, we find nothing is available to discredit or suspect their evidence with regard to the motive aspect also. Therefore, we are unable to countenance the arguments advanced by the learned Counsel for the appellants on the question of motive as well as credibility of the oral testimony of P.Ws. 1, 2 and 6 in this case pertaining to the first circumstance.

24. The next circumstance which provides the link and the connecting chain with the complicity of the accused in committing the murder of deceased was that at about 8.30 p.m. on 11-10-1983, A1 and A2 were seen along with the deceased Rajendran at the dais of 'Villuppattu' performance held at Sandhana Mariammal

temple during 'mandagapadi' festival conducted by P.W. 3. P.W. 3 is the resident of Briant Nagar and doing the profession of hiring rickshaws. He claims that he knew all the appellants and the deceased Rajendran. His evidence is so specific with regard to identifying the deceased Rajendran with A1 and A2 at about 8.30 p.m. at the 'villupattu' dais in Sandhana Mariammal temple during the 'mandagapadi' festival. He further claims that he saw them while they were sitting on the dais. Though it was elicited from him in the cross-examination that he had not said so during interrogation by P.W. 16 which in our firm view amounts to mere snap answer which has no legal bearing of any kind affecting his claim regarding the identity of deceased Rajendran sitting along with A1 and A2. P.W. 16 claims that he has examined this witness immediately on the following day of the occurrence. Therefore, we accept the oral testimony of this witness regarding second circumstance, namely the happening at about 8.30 p.m. on 11-10-1983 during which A1 and A2 were seen along with the deceased Rajendran. This aspect of the evidence clearly provides corroboration to the evidence of P.Ws. 1, 2 and 6. That apart, the recovery of the broken coconuts (coconut sirattai) from the place where the headless trunk was recovered by P.W. 16 under cover of mahazar Ex.P. 3 lends support and provides a clear link to the claim of P.W. 3. It is seen that this witness has claimed that during the 'Dhasara' festival held in Sandhana Mariamman temple and when he conducted the 'mandagapadi', he used to give broken coconuts to important persons who visited the said temple. Therefore, we are inclined to accept the second circumstances also as clearly established by the prosecution directly over the complicity of accused A1 and A2. The third circumstance is that it was claimed by P.W. 4 that on 11-10-1983 at about 10.30 p.m. when he was in his arrack shop A1 to A4 along with Rajendran came to his shop and A1 and deceased Rajendran consumed brandy which they brought, while the rest of the accused consumed arrack in their shop and after a short span of 10 minutes, all went away. This witness further claims that he has identified one shirt M.O. 6, lungi M.O. 5 worn by A2 and muffler M.O. 4 in the Police Station on 15-10-1983. On a careful analysis of the evidence of this witness, since nothing has been brought out in the cross-examination of this witness and there is nothing for this witness to speak against the accused and implicate them in this case, we are fully satisfied to accept the claim of this witness

that he has seen the accused/appellants with the deceased Rajendran at about 10.30 p.m. in his arrack shop which is situated near the Sandhana Mariamman temple.

25. Mr. Abdul Ghani, learned Counsel for the appellants drew our attention to some discrepancy in the evidence of this witness with regard to the time during which the accused came and consumed brandy and arrack in his shop and contended that the evidence of this witness cannot be relied on. Considering the attendant circumstances prevailed at that time, it has been clearly made out by the prosecution that this witness was an employee in arrack shop No. 8 which is situated near the Sandhana Mariamman temple and it is proximate to infer that after attending the 'mandagapadi' in the Sandhana Mariamman temple, deceased came to the arrack shop along with accused and consumed liquor at about 10.30 p.m. on that day which was noticed by P.W. 4. The evidence of this witness is quite convincing, natural and nothing has been made out to assail the oral testimony of this witness. Therefore, we reject the contention of the learned Counsel for the appellants with regard to the credibility of this witness and accept the third circumstance namely, that the accused were found consuming arrack along with the deceased at about 10.30 p.m. on that day.

26. Coming to the fourth circumstances that at about 12 mid night on 11-10-1983, the accused/appellants were found with the deceased proceeding from east to west in front of the house where P.W. 5 was staying, the evidence of P.W. 5 Subramanian is available. He claims that there was rain on that day at about 11 p.m. while he was lying on the cot and that at about 12 mid night when the rain stopped, he came out to pass urine and that during that time, he saw the appellants proceeding from east to west along with the deceased and that A2 and A4 were having M.Os. 7 and 8 which were produced by A1 and recovered by P.W. 16 on 14-10-1983 under the cover of mahazar Ex.P. 6. This witness particularly claims that he knew A1 to A4 as well as deceased Rajendran. He was residing at the Briant Nagar for the last more than 15 years. If that was the position, there is nothing strange for this witness in claiming that he knew the appellants and the deceased. It is quite but natural for this witness to have come out of the house for the purpose of passing urine after the rain stopped. Since the appellants as well as

deceased Rajendran were the residents of Briant Nagar, and this witness was a resident of that locality for more than 15 years, there is nothing unnatural or strange in the claim of this witness and he saw the accused and the deceased proceeding from East to West at about 12 mid night on that day. But significantly, this witness claims that he has seen A2 and A4 having M.Os. 7 and 8 at that time. During his cross-examination, he answers thhat he does not remember to have told P.W. 16 that the accused were having M.Os. 7 and 8. At this juncture, it is significant to note that there was enough light during that time to identify which of the weapon was possessed by which of the accused and that the sufficiency of light to identify the particular type of weapon possessed by such of the accused by this witness is totally absent in this case. So it is made clear that the prosecution failed to adduce any evidence with regard to the light element so as to fix the accused who were armed with M.Os. 7 and 8. As this witness was the resident of that locality for a long time, it is quite safe to accept his claim that he would have identified the persons going from east to west, namely the appellants herein along with deceased Rajendran. The occurrence of this case according to the prosecution was on the night of 11-10-1983. A perusal of the calendar for the year 1983 reveals that the full moon for the month of October, 1983 fell on the evening of 21-10-1983 i.e. 9 days after the night of the occurrence. The new moon for the month of October 1983 was on 6-10-1983 i.e. 5 days prior to the occurrence proper. From the above undisputed circumstance at about 12 mid night on 11-10-1983, 5 days after the new moon, it is common knowledge that there may not be sufficient moon light on the night of occurrence to specifically note the weapons or sword in the hands of the persons going outside. However, this witness can note the identity of the persons, namely the appellants who were going there because he knew them for a very long time.

27. It is the consistent claim of P.Ws. 1 to 6 that on the next day morning namely on 12-10-1983, they heard about the murder of the deceased Rajendran and that the body was lying near the compound wall of the V.O.C. College hostel and they went and saw the headless trunk of the deceased Rajendran, more particularly from the old injuries on the body of Rajendran it is quite possible for P.W. 1 the aunt of the deceased Rajendran and P.W. 2 his wife to identify M.Os. 1 to 3 and the body of the deceased. They are the only proper persons expected to identify

the body of the deceased. Their claim in establishing the identity of the headless trunk of the deceased Rajendran was never shattered by the defence on behalf of the accused. It is quite but natural for these witnesses P.Ws. 1, 2 and 6 to identify the body of Rajendran though his head was not available. We feel totally convinced in accepting the evidence of P.Ws. 1, 2 and 6 as well as P.Ws. 4 and 5 from the recovery of blood-stained M.Os. 1 to 3, to the extent of claim that the trunk of the deceased in the abovereferred place was identified by P.Ws. 1 and 2 properly. Then the identity of the severed head of deceased Rajendran on the evening of 14-10-1983 when it was exhumed by P.W. 15 at about 3.30 p.m. near the College at Fathima Nagar by P.W. 2, his wife is also bound to be accepted. She also claims that she identified the muffler (M.O. 4) rounded upon the severed head belonging to A1 and saram (M.O. 5) belonging to A2. During cross-examination it was elicited from P.W. 2 that she identified the severed head of her husband from old wounds found on the head of her deceased husband more so, though the trunk and head was severed and found in different places. It is quite natural for the wife who is expected to know the symmetrical system of the anatomy of the body of her husband, she is the proper person to identify the same and accordingly, P.W. 2 has identified both the trunk and the severed head. On a careful perusal of her evidence, we are fully satisfied to accept that the trunk and severed head were duly identified as that of the deceased Rajendran on the morning of 12-10-1983 as well as on the evening of 14-10-1983 in different places as claimed by the prosecution. The above aspect of the proved circumstance provides continuity of the link of the prosecution case towards the guilt of the appellants herein. Next comes the evidence of Dr. John Norman, P.W. 14, Doctor attached to Government Head Quarters Hospital, Tuticorin who conducted autopsy over the headless trunk of the deceased Rajendran at about 4.15 p.m. on 12-10-1983 and issued Ex.P. 22 post mortem certificate. He has noted 4 injuries on the trunk. According to him the head of the person was missing and totally severed at the root of the neck. He found 3 injuries, injuries 2 to 4 on the non vulnerable parts of the headless trunk. He opined that the person of the trunk would have died of severing of the head a bout 16 to 18 hours prior to his post mortem and that the injury number 1 namely the cutting of the neck in toto from the trunk was possible at the early hours namely about 1 a.m. on 12-10-1983

which was necessarily fatal. The same doctor received a requisition from P.W. 15 and he had been to the spot near Kararaj College and he was present during examination of the severed head and he conducted autopsy over the severed head at 5.10 p.m. on 14-10-1983. He issued post mortem certificate Ex.P. 23. He has noted 7 incised wounds and cut injuries on the severed head. The doctor has noted that the head was in a state of decomposition. Hairs peeled off from the skull. According to him death of the person would have occurred about 34 to 44 hours prior to his autopsy of this exhumed head. He claims that he has preserved the lower end of the vertebra attached with the head and the hairs for the purpose of comparison. He further opines that from the nature of injuries found on the severed head, it would have been caused by sharp-edged weapons like M.O. 7 and M.O. 8. He also opines that the injuries found and described in Ex.P. 22 also could have been caused by weapons like M.O. 7 and M.O. 8. Since all the injuries found on the trunk and the severed head of deceased Rajendran as identified by the prosecution witness in this case could have been caused by weapons like M.O. 7 and M.O. 8 and it is also common knowledge that any sharp-edged weapon like M.O. 7 and M.O. 8 could have been used in causing the injuries found in Ex.p. 22 and Ex.p. 23. This portion of the medical evidence renders total corroboration and link to the evidence of P.Ws. 1 to 6 that during the mid night of 11-10-1983 and early hours of 12-10-1983, the deceased Rajendran was butchered to death by severing his head from the trunk near the V.O.C. College hostel ground and that thereafter his head was severed and taken to the nearby place of Fathima Nagar near Kamraj College and buried by the assailants with a view to conceal the homicidal violence perpetrated upon him. The doctor P.W. 14 and Tahsildar P.W. 15 who exhumed the severed head had no axe to grind against any of the appellants herein. Therefore, we are in total agreement with the claims of P.Ws. 14 and 15 and their certificates relied on by the prosecution. the next circumstance of the prosecution case is made available through the evidence of P.W. 9, a resident of Muthiapuram near Tuticorin. He is a M.A. graduate and he is in no way connected with either of the parties herein. He has claimed that he was present at about 12 noon on 14-10-1983 when A1 was arrested and a voluntary confession statement was given by him and recorded by P.W. 16 and that he knew that A1 was living at door No. 43, Briant Nagar I Street. When A1

identified the place where the severed head was buried and dug it and produced the head, this witness was present along with P.W. 15 and P.W. 16. Under Ex.P. 7 the severed head was recovered. He also speaks about the recovery of M.O. 13, M.O. 14, country gun and cartridge, M.O. 7 and M.O. 8 Swords and M.O. 10. Though this witness was cross-examined very meticulously nothing was elicited to discredit his testimony. He withstood the cross-examination done on behalf of the appellants. Having perused his evidence in all, we are satisfied to place full reliance on the evidence of P.W. 9 pertaining to the recovery made by P.W. 16 and the arrest of A1 and conducting exhumation of the severed head of the deceased Rajendran on the evening of 14-10-1983, the investigating officer details everything from the time of arrest of A1 and made all recoveries as claimed by this witness. Suffice at this stage for us to hold that the evidence of P.W. 9 pertaining to the arrest of A1, his voluntary statement followed by various recoveries made by P.W. 16 under section 27 of the Indian Evidence Act is cogent, convincing and natural and can safely be accepted. No iota of circumstances were made available to suspect the evidence of P.W. 9. Therefore we are in entire agreement with the view of the learned trial Judge in accepting the evidence of P.W. 9 in toto.

28. Two days after the conduct of autopsy over the headless trunk, P.W. 14 conducted autopsy over the head of the deceased Rajendran. It was the evidence of P.W. 14 that the vertebral bones cut from the neck of the trunk of the deceased were preserved when he conducted autopsy over the trunk on 12-10-1983 and that the bones cut from the severed neck of the said person after the autopsy conducted on 14-10-1983 were sent for comparison by the Chemical Examiner through Court. Both the bones have been sent to Chemical Examiner through Court and Ex.P. 12 is the report of the Chemical Examiner. As per Ex.P. 12, it is seen that both the bones were compared and it was stated that both bones belonging to the same person. Therefore Ex.P. 10, the requisition given to Court, Ex.P. 11 office copy of the letter of the learned Magistrate and Ex.P. 12, Chemical Examiner's report coupled with the evidence of P.W. 16 doctor and P.W. 16 the investigating officer provide clean corroboration for the case of the prosecution as claimed by other witnesses namely P.Ws. 1 to 6 and 9. This aspect of the last circumstance has been clearly established by the medical evidence and chemical examiner's report that the deceased Rajendran was brutally murdered after 12 mid

night on 11-10-1983 and early hours of 12-10-1983 by means of cutting his neck and severing the same from the trunk with a weapon like M.O. 7 and M.O. 8 by the appellants herein.

29. Mr. Abdul Ghani, learned counsel for the appellants, drew our attention that Ex.P. 1 was given in this case by P.W. 1 at about 6.30 a.m. on 12-10-1983 at the South Police Station, Tuticorin and P.W. 10 Sub-Inspector of Police has recorded the statement registered the case and prepared Ex. P 9 express F.I.R. and sent the same through P.C. attached to the Police Station to the Court. It is seen from the evidence that the place of occurrence is situated about 4 kilometres north west of the Police Station. It appears that the F.I.R. registered by P.W. 10 in this case reached the Court at about 10 a.m. on 12-10-1983 through P.W. 12, Police Constable attached to the South Police Station. According to P.W. 12, he got the F.I.R. at about 7.45 a.m. at the Police Station and handed over the same to the concerned Magistrate by 10 a.m. The distance between the Court and the Police Station is about 4 furlongs. Pointing out the above aspect he contended that there was an inordinate delay in sending the F.I.R. to Court by about 3 1/2 hours. But it has to be seen that oral statement was given by P.W. 1 at 6.30 a.m. on that day and it was recorded and subsequently P.W. 10 has registered the case, prepared the express F.I.Rs. and sent to Court and his superior officers, as was claimed by P.W. 12 it is quite possible to complete the process by 7.45 a.m. by P.W. 10 on that day. It is pertinent to note, to cover a distance of 4 furlongs, even accepting the evidence of P.W. 12, it may take hardly 45 minutes or an hour but in this context as pointed out by the learned trial Judge, there was a delay of about one hour in submitting the complaint to the Magistrate's Court. However in view of the established circumstances this delay in our view has not imparied the other established part of the prosecution case. Thus, by the evidence of P.Ws. 1, 2 and 6 the first circumstance of seeing the appellants 1 to 3 with the deceased with A1 and A2 at about 8.30 p.m. on that day at the dais of 'villupattu' near Sandhana Mariamman temple and that they were there for some time has been clearly established by the evidence of P.W. 3; the third circumstance of seeing the deceased along with the appellants herein at 10.30 p.m. on that night has been clearly established by the evidence of P.W. 4, an employee in arrack shop No. 8 near Sandhana Mariamman temple; the fourth circumstance that at about 12 mid

night on that day, the appellants were identified along with the deceased going from east towards west is established by the evidence of P.W. 5 and that on the next day morning the trunk of the deceased was identified by all witnesses more particularly P.Ws. 1 and 2 and that subsequently on 14-10-1983 A1 pointed out the place where he buried the severed head of Rajendran which was recovered under mahazar, exhumed and autopsy conducted over the same and the production of M.O. 4 muffler belonging to A1 and M.O. 5 saram belonging to A2 as identified by P.W. 2 and spoken to by P.W. 9, supported by the medical evidence and the chemical examiner's report are all the aspects that provide a continuous chain and link of the appellants 1 and 2 in causing the death of the deceased Rajendran at the backside of the V.O.C. College hostel by causing injuries and cutting his neck and severing his neck and buried the head in a sandy elevation near Kamaraj Collect near Fathima Nagar at Tuticorin and concealed the commission of crime and thus the prosecution has established the complicity of the appellants 1 and 2 in the crime by proving the circumstances.

30. There is no eye-witness in this case. Since the entire case rests on circumstantial evidence it is necessary to refer to the principles which should guide the Court in considering the conviction of an accused resting on circumstantial evidence. In *Harendra Narain Singh v. State of Bihar* : 1991 CriLJ2666 , it has been held as follows (at page 2668 (of Cri LJ) :

'It is a cardinal principle of criminal jurisprudence that circumstantial evidence must be fully established from which there should be inevitable conclusion of the guilt of the accused beyond any reasonable doubt and the facts so established should be consistent only with the hypothesis of the guilt of the accused, ruling out any hypothesis of innocence of the accused. In *Hanumant v. State of Madhya Pradesh* : 1953 CriLJ129 , this Court laid down fundamental and basic principles for appreciating the circumstantial evidence. Mahajan J., speaking for the Court observed (at pp. 345-46 of AIR) :

'It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstance 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.' There is yet another basic rule of criminal jurisprudence that if two views are possible on the evidence adduced in a case of circumstantial evidence, one pointing to the guilt of the accused and the other to his innocence, the Court should adopt the latter view favourable to the accused.'

31. Thus it is well settled that in a case resting purely on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain in proving the guilt of the accused beyond all reasonable doubt. Circumstances so proved must also be consistent only with the guilt of the accused. All the circumstances relied on and established by the prosecution as we have already observed in the light of the above principle, we find that the complicity of the accused namely, appellants 1 and 2 in this case in committing the murder of deceased Rajendran on the night of 11-10-1983 and early hours of 12-10-1983 by cutting and severing his head from the body near a place alleged with a weapon like M.O. 7 and M.O. 8 has been proved clinchingly beyond the realm of all reasonable doubt and the circumstances established by the prosecution witnesses have provided every link and chain of the events projected towards the one and only conclusion namely towards the complicity of the appellants 1 and 2 in the crime.

32. As regards appellants 3 and 4 are concerned except that in the arrack shop, A3 and A4 also accompanied the deceased and consumed arrack and that they were also going along with the other accused at about 12 midnight and that A3 was also seen with A1 and A2 at about 7 p.m. on that day when the deceased Rajendran was taken from his house, no other evidence as to the motive, enmity or incriminating circumstance is available in this case. As we have already observed that even the identity of A3 and A4 at about 12 midnight on 12-10-1983

by P.W. 5 can not be relied on. Even P.W. 3 claims that he saw A1 and A2 with the deceased at the 'villupattu' dais in Sandhana Mariamman temple at about 8.30 p.m. on that night. While analysing the entire evidence let in by the prosecution, excepting the circumstances that A3 and A4 were seen along with the other accused and deceased, A3 at 7.30 p.m. along with A1 and A2, A3 and A4 along with other accused in the arrack shop at 10.30 p.m. and at 12 midnight in front of P.W. 5's house, no other cogent or convincing evidence to their over tacts were claimed or spoken to. May be that appellants 3 and 4 were the associates of appellants 1 and 2. That itself does not mean that they had joined or shared a common intention of the first and second appellants herein. For the second appellant the saram M.O. 5 (lungi) produced by the first appellant on 14-10-1983 with the severed head of the deceased Rajendran identified by P.W. 2 is there. But as regards appellants 3 and 4 the circumstances established by the prosecution as above referred was not sufficient to sustain a conviction against them. Though some of the prosecution witnesses claim that appellants 3 and 4 were seen with the other appellants and deceased, that circumstance alone in our clear opinion would not suffice to convict them for the offences charged. Therefore, we are inclined to give benefit of doubt to appellants 3 and 4 from the offences they were convicted for want of sufficient and convincing circumstantial evidence even.

33. Lastly, one faint argument was advanced by the learned counsel for the appellants that even as admitted by P.Ws. 1, 2 and 6, the deceased was having number of enemies and that they should have murdered him and thrown the blame on the appellants herein. True, we are able to see the non too happy antecedents of the deceased Rajendran and on prior occasions, he was injured by the attack caused by somebody and he had been taking treatment. But this is a case where the prosecution had established the total complete chain and link of the circumstances which proves the guilt of the appellants 1 and 2 by cogent, continuous, convincing and natural kind of evidence. After a careful consideration of the entire prosecution case and the established circumstances in the instant case, we feel totally unable to accept the theory of the appellants that P.W. 2 with the help and aid of one Anthonyappa would have committed the murder of her own husband when they were living peacefully and cordially and the said suggestion still remains a mystery without any basis for consideration to any

extent. Thus having given our meticulous consideration to the entire evidence, proved and established circumstances in the instant case, we are fully satisfied to hold that the prosecution has established the guilt of the first and second appellants in committing the heinous crime of murder of Rajendran on the night of 11-10-1983 at the place alleged. As regards the offence under section 201, IPC is concerned, we are able to identify the evidence of P.W. 9, P.W. 15 and P.W. 16. According to the prosecution on the evening of 14-10-1983 following the arrest of A1 by P.W. 16 and recording his voluntary confession statement, the first appellant took P.W. 9, P.W. 15 and P.W. 16 to the place where the severed head of Rajendran was buried near Kamaraj College, Tuticorin, dug the sand and produced the severed head and that was recovered under Ex.P. 7, muffler and saram belonging to first appellant and second appellant respectively were recovered under Ex.P. 8. Exhumation was conducted by P.W. 15 and autopsy by P.W. 14. The arrest and recovery has been spoken to by P.W. 16 the investigating officer. It has to be seen that the severed head of the murdered Rajendran was taken from the place where the trunk was found to a distant place covered with the muffler of A1 and saram of A2 and buried by the assailants namely A1 and A2. They buried the severed head only with a view to conceal their complicity in perpetrating the crime namely the murder of the deceased in a heinous manner and to obliterate their identity as well as the person of deceased who was murdered by them. A careful perusal of the oral testimony of P.W. 9, P.W. 14, P.W. 15 and P.W. 16 coupled with the evidence of P.W. 1 and P.W. 2 in identifying the severed head, we are fully satisfied to hold that the assailants namely the first and second appellants after committing the murder of the deceased Rajendran by cutting his neck and with a view to conceal the evidence of their complicity in the homicidal violence took the severed head of the deceased to a different place and buried under sand in a place near Kamaraj College, Tuticorin and from there at the initiation of the first appellant it was recovered followed by subsequent investigating formalities. Therefore, we are so clear that the offence under section 201, I.P.C. has been clearly made out against the first and second appellants alone.

34. According, the conviction and sentence awarded by the learned trial Judge for the offences under sections 302 r/w. 34, I.P.C. and 201, I.P.C. is hereby confirmed

as against the first and second appellants. But during the course of the arguments, learned Additional Public Prosecutor as well as the learned counsel for the appellants submitted that after the trial and during 1988, the second appellant was murdered. Therefore the charge and conviction imposed on him abated.

35. For the reasons stated above, we set aside the conviction and sentence imposed on A3 and A4 and they are acquitted and set at liberty forthwith and accordingly this appeal is allowed for appellants 3 and 4. In so far as the first appellant is concerned, the appeal is dismissed.

36. Order accordingly.

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