

In Re: Kandhapadayachi Alias Kandaswami

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SooperKanoon Citation : sooperkanoon.com/810513

Court : Chennai

Decided On : Apr-29-1970

Reported in : (1970)2MLJ371

Appellant : In Re: Kandhapadayachi Alias Kandaswami

Judgement :

K.S. Venkataraman, J.

1. This is an appeal against the judgment of the learned Sessions Judge of South Arcot, by which he convicted the appellant herein, Kanda Padayachi under Section 302 of the Indian Penal Code for committing the murder of one Natesa Padayachi, by delivering cuts on him, on the night of 10th July, 1969, (Thursday) in Valayamadevi Village, and sentenced him to the extreme penalty of the law, subject to confirmation by this Court.

2. Natesa Padayachi (deceased) and his wife Meenakshi (P.W. 1) were residing originally in Neyveli Road, just north of the house of the appellant. The appellant's wife died three years before, and he had no children. The appellant developed illicit intimacy with P.W. 1 about seven months prior to the occurrence. One afternoon, about four months prior to the occurrence, the children of Natesa Padayachi were not in the house. Natesa Padayachi happened to return home earlier and discovered his wife and the appellant in a compromising position. Natesa Padayachi quarrelled with the appellant and warned him and P.W. 1. The

appellant retorted saying that Natesa Padayachi should control his wife. P.W. 5 who happened to pass along that way, was a witness to this. He pacified the appellant saying that he should not quarrel with Natesa Padayachi, who was an elderly person.

3. In order to prevent the appellant visiting P.W. 1, Natesa Padayachi, shifted his residence to the northern portion of a chatram belonging to his master, P.W. 6 : Natesa Padayachi was a driver in the 1 rice-mill belonging to P.W. 6 and his father Sundaralingam Pillai. P.W. 1 states that the appellant did not thereafter have sexual connection with her.

4. About one and a half months prior to the occurrence, the appellant complained to Govindaraju (P.W. 2) that he had presented a saree, jacket and money to P.W. 1 and that, when he wanted back those articles, Natesa Padayachi was quarrelling with him. The appellant sought the intervention of P.W. 2. P.W. 2 spoke to Natesa Padayachi about it, but Natesa Padayachi stated that it was not proper on the part of P.W. 2 to intervene. P.W. 2 informed the appellant of what happened. The appellant replied that he would himself deal with the matter. He said this in anger.

5. About two days prior to the occurrence, the appellant also complained to Subbarayan (P.W. 5) that he had presented saree, jacket and money to P.W. 1 and that he should get them back. P.W. 5 advised him to approach prominent persons.

6. Three days before the occurrence, on 7th July, 1969,(Monday), about 2-30 p.m. the appellant came to the house of P.W. 1. P.W. 1 abused him saying that he had spoiled her family life in the previous house and that he should not come again. The appellant replied that it was because of her husband that she was talking to him in such an arrogant manner and that, if he did away with her husband, she could not do anything thereafter. The appellant left the place. P.W. 1 says that thereafter he used to go about in the street with the aruval, M.O. 1. P.Ws. 5 and 6 also say that they had seen the appellant going about the street near the chatram armed with the aruval M.O. 1.

7. On the date of the occurrence, 10th July, 1969, about 11 A.m., P.W. 1 left with her children for Chidambaram on the instructions of her husband to see her husband's brother who was ailing. On the way to the bus stand (at Valayamadevi), she saw the appellant in the tea shop of Muthu (P.W. 3). The appellant stared at her. It is stated by the prosecution that thus the appellant knew that on that night Natesa Padayachi alone would be in the house.

8. On the night of the occurrence, about 9-30 p.m. the appellant was in the tea shop of P.W. 3 as usual cutting onions. At that time P.W. 4 came there with a head-load of 1 ice which he had hulled for his master in the rice-mill of Sundaralingam. P.W. 4 came to the tea shop to eat dosai. The appellant asked him wherefrom he was coming. He stated that he was coming from the rice-mill. The appellant asked him whether the driver that returned home or was in the rice-mill. P.W. 4 replied that the driver was in the rice mill. There was only one driver and that was Natesa Padayachi. P.W. 4 asked the appellant why he enquired about the driver. The appellant did not reply. There was no flour for making dosai, so P.W. 4 went away. This conversation between the appellant and P.W. 4 has been spoken to by P.Ws. 3 and 4.

9. On Friday, nth July, 1969, P.W. 6 was going to take his bath. He found Kasambu, a neighbour of Natesa Padayachi calling Natesa Padayachi. There was no response. P.W. 6 pushed the door open and found Natesa Padayachi lying dead in a pool of blood. He met P.W. 5 in the lane and took him to the place. They found cut injuries on the neck and other parts of the body. Among other articles, they saw a towel (M.O. 6) near his legs. That towel, as we shall see, is a vital piece of evidence against the appellant, because it contained a dhobi mark of three dots and has been identified as belonging to the appellant.

10. Since the Village Headman was not available, P.W. 6 went to Sethiatope Police Station by bus and gave the report, Exhibit P-1 at 7-30 a.m. to the Sub-Inspector (P.W. 13)

11. P.W. 13 registered a case of murder, sent express reports and gave a telephone message to the Inspector (P.W. 14). P.W. 14 rushed to Valayamadevi Village picking up P.W. 13. He reached there at 9-15 a.m. He inspected the scene

along with the Village Munsif of Valayamadevi (P.W. 10). He drew up an observation mahazar, Exhibit P-4. P.Ws. 10 and 14 say that, among other articles, a towel (M.O. 6) was there on the eastern side of the pillow (M.O. 2) near the right foot of the victim. This fact is mentioned in the observation mahazar, Exhibit P-4. It further specifically refers to the dhobi mark of three dots. This and other articles were duly recovered. P.W. 14 held the inquest between 9-30 a.m. and 12-30 p.m. and he examined then P.Ws. 2, 4, 5 and 6. He then went to the house of the appellant and searched it between 1 and 1-30 p.m. and recovered M.O. 8, a dhoti of the appellant and that was also found to contain, the same dhobi mark of three dots. The appellant was absconding.

12. On 12th July, 1969, about 4 p.m. the appellant appeared at the Sethiatope Police Station. P.W. 14 who was there arrested him. The appellant was then wearing a dhoti M.O. 7, having the same dhobi mark of three dots, and a piece of dhoti (M.O. 9) over his shoulder. Later chemical examination revealed human blood on M.O. 9.

13. The appellant made a statement to the Inspector, P.W. 14 in the presence of P.W. 11 and another. In pursuance of the portion, Exhibit P-7, the appellant took the Inspector to Valayamadevi Village and therefrom under a cultvert took out M.O. 1. The Chemical Examiner found blood on it, but by the time it reached the Serologist, the blood had disintegrated.

14. P.W. 9 is a washerman and he claims to have washed the clothes of the appellant for ten years. He swears that he used to put the mark of three dots on the clothes of the appellant. M.Os. 6, 7 and 8 contain that mark and it was he who put that mark on those clothes. He had washed them for the appellant for about six times.

15. The autopsy was conducted by the doctor P.W. 7 at 4-30 p.m. on 11th July, 1969. There were nine incised wounds, all ante-mortem, which could have been caused by a weapon like M.O. 1. Injury No. 1 was necessarily fatal. It was a gaping incised wound 7 ' x 3 ' on the right side of the back of the neck extending from the right side of the neck, 11/2]' above the clavicle and ending at the back of the neck in the middle. All the structures at the site of the injury (muscles, vessels,

and nerves) had been cut into two. Three big blood clots were present at the site of the injury. Injuries 2 and 3 were sufficient in the ordinary course of nature to cause death. Injury No. 2 was below the ear extending from the middle of the cheek to the right side of neck. Injury No. 3 was on the right side of the face.

16. After the discovery of the aruval (M.O. 1), P.W. 14 sent the appellant for medical examination by the doctor, P.W. 8, who examined him and found on him two injuries; (i) a small abrasion 1/4' x 1/8' on the right dorsum of the foot just at the base of the second toe; (ii) multiple linear abrasions on the right arm and front of the chest. The injuries were simple. P.W. 8 swears that the appellant told him that 'he was bitten by one Natesa Padayachi on the midnight of 10th July, 1969, about 12 o'clock and scratched.' The injuries could have been caused at the time alleged injury No. 1 by biting and injury No. 2 scratching on rough surface. In other words, the evidence of the doctor is that the appellant explained that injury No. 1 was caused by one Natesa Padachi biting him on the midnight of 10th July, 1969, and injury No. 2 (linear abrasions) was caused by scratching, on rough surface. Exhibit P-3 the wound certificate also mentions these facts.

17. In the committal Court the appellant denied the evidence completely even his alleged intimacy with P.W. 1. Regarding the towel, he said:

I was never wearing that towel. Police took the towel from me, beating me and threatening me.

He added at the end that he had been working in the field of Sundaralingam, the father of P.W. 6, and stopped away, and that on account of that enmity the case had been foisted on him.

18. In the Court of Session also he adhered to the above defence. He stated that M.O. 6 was not his and that he was not wearing M.O. 7 or M.O. 9. He was wearing only an underwear. He denied that P.W. 9 was his washerman. Regarding his injuries, he explained that he sustained them when he cut and brought thorns and that he did not tell the doctor that he sustained the injuries on account of biting by Natesa Padayachi. He did not examine any defence witnesses.

19. The learned Judge accepted the prosecution evidence and on the strength thereof convicted the appellant. In paragraph 24 of this judgment he has summarised the several pieces of circumstantial evidence succinctly. His reasoning is correct, except on one respect, that the learned Judge was wrong in thinking that in the committal Court the appellant had admitted that the towel (M.O. 6) belonged to him.

20. In the first place, there was ample motive for the appellant to commit the murder. That has been proved by the evidence of P. Ws. 1,2 and 5. Nothing has been alleged as to why they should give false evidence against the appellant, if, as he would say, he had nothing to do with P.W. 1. The evidence clearly shows that the appellant found that Natesa Padayachi was an impediment to the intimacy which he wanted to revive with P.W. 1.

21. Secondly, on the date of the murder, the appellant knew that the deceased would be alone in his house, because P.W. 1 had left with her children, and he saw them when they were going to the bus stand. The evidence of P.Ws. 3 and 4 shows that about 9-30 or 10 p.m. he enquired of P.W. 4 whether the driver was in the mill or had returned home. There was only one driver and that could refer only to Natesa Padayachi. P.W. 4 says that he asked the appellant why he enquired about the driver, but the appellant did not reply. This is not spoken to by P.W. 3. It may be that P.W. 3 does not remember it. But even if that portion of the evidence of P.W. 4 is left out, the enquiry made by the appellant is itself significant.

22. The evidence clearly shows that Natesa Padayachi was murdered that night by cuts being delivered on the neck, etc. The towel (M.O. 6) was lying near the leg of the deceased. P.Ws. 5 and 6 say that they saw the towel when they entered to place on the morning of 11th July, 1969. P.Ws. 10 and 14 have also spoken to the presence of the towel when they came to the scene later. The observation mahazar, Exhibit P-4, mentions it and further says that it had the dhobi mark of three dots'....In view of this it is clear that the towel (M.O. 6) was found there. It has been duly identified as belonging to the appellant. In the first place, there is the evidence of the washerman (P.W. 9). There is no reason to reject his evidence. A suggestion has been made to P.W. 9 that he had entrusted goats to the appellant

on lease and that there was dispute between them. But the suggestion has been denied, and there seems to be no basis for the suggestion. The evidence of the washerman does not stand alone, because the same dhobi mark was found in M.O. 8 which was recovered from the house of the appellant in the house search made by P.W. 14 in the presence of P.W. 10 and another under the house search list, Exhibit P-5. Further, P.Ws. 14 and 11 have sworn that, when the appellant surrendered at the police station on 12th July, 1969 he was wearing a dhoti (M.O. 7) on his loin and a piece of dhoti (M.O. 9) on his shoulder, and that M.O. 7 was found to contain the same dhobi mark. They were recovered under the mahazar, Exhibit P-8 and that mahazar mentions the dhobi mark of three dots on M.O. 7.

23. P.Ws. 1 and 3 have also identified M.Os. 6 and 7 as belonging to the appellant-P.W. 1 says in particular that the appellant was wearing M.Os. 6 and 7 on the after-noon of Monday (7th July, 1969) when he came to her house as well as when he was at the tea hotel of P.W. 3 when she was going to the bus stand at 11 a.m. on 10th July, 1969. In cross-examination she further says that she had seen the appellant wearing M.O. 6 not only on those two occasions, but she had seen the appellant wearing M.O. 7 even prior to the two occasions. P.W. 3 also says that on the night of 10th July, 1969, about 10 p.m. the appellant was wearing M.Os. 6 and 7. So far as P.W. 1 is concerned, it has been suggested that P.W. 6 was intimate with her, that there was dispute between P.W. 6 and the appellant about the payment of wages and that she was giving false evidence against the appellant at the instance of P.W. 6. P.W. 1 denied the suggestions completely and there seems to be no basis for the suggestions.

24. Similar suggestions made to P.W. 6 have been denied. There seems to be no basis for the suggestions.

25. Nothing has been suggested against P.W. 3. In fact, the appellant used to visit his shop regularly and help P.W. 3 in cutting onions. P.W. 3 says that that was why he was able to identify M.Os. 6 and 7. His evidence appears to be natural,

26. Thus it is amply clear that M.O. 6 was found at the scene of murder and it has been proved as belonging to the appellant. Surely, this is a strong circumstance showing that the appellant was the murderer.

27. Fourthly, there is the conduct of the appellant in surrendering at the police station on 12th July, 1969, about 4 P.M. wearing M.Os. 7 and 9. Later chemical examination revealed human blood on M.O. 9. The Chemical Examiner found blood on M.O. 7 but it had disintegrated by the time it reached the Serologist.

28. The appellant would say that he did not go to the police station of his own accord, that on the morning of Friday (12th July, 1969) the police took him from his house and that at that time he had cut thorns and brought them home. He would, further say that M.Os. 7 and 9 are not his. There is no reason, however, why P.Ws. 14 and 11 should give false evidence. The conduct of the appellant shows that at that time he was in a mood to confess and that was why he appeared at the police station of his own accord. He also made a statement (Exhibit P-7) and in pursuance of it he took the aruval (M.O. 1) from under a culvert. Here again chemical examination showed blood on M.O. 1, but by the time it reached the Serologist, it had disintegrated. This statement and the production of the aruval also constitute important links in the chain of circumstantial evidence.

29. Above all, there was the statement of the appellant to the doctor, P.W. 8, that the small abrasion on the right dorsum of his foot was caused by biting by Natesa Padayachi on the night of 10th July, 1969 about 12 o'clock. The suggestion in the cross-examination of the doctor is that the appellant told him that both the abrasion on the right foot and the multiple linear abrasions on the right arm and front of chest had been caused while he was carrying a bundle of thorns and that he did not mention the name of Natesa Padayachi at all. P.W. 8 had denied the suggestion. There is absolutely no reason why the doctor should give false evidence against the appellant. We have seen that there is nothing surprising in his having given such a statement to the doctor, because his conduct in surrendering at the police station and producing the aruval (M.O. 1) shows that he was in a mood to confess. It may be noted further that the appellant does not say in his statement under Section 342 of the Criminal Procedure Code that he told the doctor about Natesa Padayachi, because of coercion and beating by the police. His defence is that he did not mention the name of Natesa Padayachi at all to the doctor P.W. 8. There is no reason why the doctor should give false evidence that the appellant mentioned the name of Natesa Padayachi, and, since the appellant

himself does not say that it was the police who asked him to mention the name of Natesa Padayachi to the doctor, we can take it that he voluntarily told the doctor that the abrasion on the right foot was caused by Natesa Padayachi biting him on the midnight of 10th July, 1969.

30. The question, however, arises whether the statement of the appellant to the doctor will be inadmissible under Section 26 of the Evidence Act, which says that no confession made by any person, whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. The appellant was in police custody when he was examined by the doctor, because he was sent to the Magistrate for remand only on 13 th July, 1969. If the statement made by the appellant to P.W. 8, that the abrasion on the right dorsum of the foot had been caused by Natesa Padayachi biting him on the night of 10th July, 1969, would amount to a confession within the meaning of Section 26 of the Evidence Act, the statement would certainly be inadmissible. But there is the high authority of the observations of the Privy Council in *Pakala Narayan Swami v. Emperor* , to the effect that such a statement might be an admission, but would not amount to a confession. One of the questions which arose in that case was the admissibility of a statement made by the accused in that case (*Pakala Narayan Swami*) to the police in the course of the investigation of the murder of one Nukaraju to the effect that Nukaraju had come to the house of the accused on the evening of 21st March, 1937, slept in one of the outhouse rooms for the night and left on the evening of 22nd March, by the passenger train. The Courts below had admitted the statement. Their Lordships held that it was not admissible and should have been rejected. They based their decision on the ground that the statement was inadmissible because of Section 162 of the Criminal Procedure Code. The contention on behalf of the Crown on that point was that at the time *Pakala Narayan Swami* made the statement to the police, he had not even been thought of as an accused by the police. Their Lordships observed that that would not make any difference and that the language of Section 162, Criminal Procedure Code, was wide enough to include such a statement. It was pressed before their Lordships that such a view would abrogate the provisions of Sections 25, 26 and 27 of the Evidence Act. Regarding Section 27 of the Evidence Act, their Lordships pointed out that, under certain circumstances, both Section 27

of the Evidence Act and Section 162 of the Criminal Procedure Code could stand together that, even if there was any conflict, Section 27 of the Evidence Act would perhaps be saved on the ground that it was a special law within the meaning of Section 1 (2) of the Criminal Procedure Code and that Section 162, Criminal Procedure Code, was not a specific provision to the contrary. Their Lordships, however, left the point open, and it may be noted that later there was a specific amendment to Section 162, Criminal Procedure Code, saving a statement made under Section 27 of the Evidence Act. Their Lordships then proceeded to observe that, in view of their decision that the alleged statement of the accused in that case was inadmissible by reason of Section 162, Criminal Procedure Code, it was unnecessary for them to discuss the further contention of the accused that it was inadmissible as a confession under Section 25 of the Evidence Act. They went on to observe:

As the point was argued however and as there seems to have been some discussion in the Indian Courts on the matter it may be useful to state that in their Lordships' view no statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of confession in Article 22 of Stephen's Digest of the Law of Evidence which defines a confession as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. If the surrounding articles are examined, it will be apparent that the learned Author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872 : and in that Act it would not be consistent

with the natural use of language to construe confession as a statement by an accused suggesting the inference that he committed the crime.

31. It may be noted that their Lordships give an illustration even of an admission of a conclusively incriminating fact, namely, that the accused was the owner of and was in recent possession of 'the knife or revolver which caused a death with no explanation of any other man's possession. They say that even such an admission would not amount to a confession, within the meaning of Section 25 of the Evidence Act.

32. The same word 'confession' appears in Section 26 of the Evidence Act and the above observations would apply equally in construing the term 'confession' in Section 26. In fact, they would apply with stronger force, because, if even a direct statement to a police officer, which was the case before their Lordships, was, in the opinion of their Lordships, admissible as not amounting to a confession, though it would be an admission, there is no reason why a statement to a doctor, while the accused is in police custody, should not be admitted as an admission. The basis of the reasoning of their Lordships is that the term 'confession' must be strictly construed as either admitting in terms the offence or at any rate substantially all the facts which constitute the offence, and anything short may only be an admission, even if it is an admission of a gravely incriminating fact or even of a conclusively incriminating fact. That reasoning would apply equally well to Section 26 of the Evidence Act.

33. The above limited definition of 'confession' given by their Lordships of the Privy Council has been followed by their Lordships of the Supreme Court in two cases, *Palvinder Kaur v. State of Punjab* : 1953 CriLJ154 , and *Om Prakash v. State of U.P.* : AIR 1960 SC409 , In *Palvinder Kaur v. State of Punjab* : 1953 CriLJ154 , where the question was whether the accused had administered poison to her husband, the accused made a statement that her husband had consumed the poison himself mistaking it for another medicine. Read as a whole, it was of an exculpatory character. But the prosecution sought to rely on that as showing that the accused was present when the poison was consumed by her husband and would incriminate her. But their Lordships pointed out that the statement as a

whole was exculpatory in character and did not amount to a confession. They relied on the observations of the Privy Council.

34. Similarly in *Om Prakash v. State of U.P.* : AIR 1960 SC409 , their Lordships pointed out that the statement of the accused taken as a whole did not incriminate him as having offered the bribe.

35. It is true that these were cases where the observations of the Privy Council were used in favour of the accused, but we find that there is another decision of the Supreme Court itself where the first information report of the accused was used against him as containing an admission which did not amount to a confession, though no reference was made to the limited definition of ' confession ' in *Pakala Narayan Swamy's case* (1939)1 M.L.J. 756 : 66 I.A. 66 : (1939) I.L.R. 18 Pat. 234 (P.C.), The case is *Faddi v. State of Madhya Pradesh* : 1964 CriLJ744 . There one Jaibai, widow of Budhu, began to live with Faddi, a few years after the death of her husband Jaibai had a son, Gulab, by Budhu. He was aged 11 years and was living in a village Torkheda, in the house of his uncle, Ramle. Gulab's corpse was recovered from a well on 21st January, 1962. The first information report in the case was given by Faddi to the police at 9 p.m. on 20th January, 1962. He stated that on peeping into the well on the morning of 20th January, he found Gulab lying dead in the well. Earlier in the report he had mentioned the circumstances leading to his observing the corpse. He stated that he had gone to the house of Ramle on 19th January, 1962, and asked Ramle to send Gulab with him. At that time a message was received from Gulab's mother not to send the boy with any one. Faddi came away, but later caught hold of Gulab from the fields. Later Ramle and two others, namely, Bhatta and Shyamlal, came and threatened the appellant. They took the boy away. The appellant kept himself concealed nearby. He heard the sound of something being thrown-into the well. The three persons ran away. The appellant sat there throughout the night. He peeped into the well the next morning, and observed the corpse of Gulab. The learned Sessions Judge and the High Court held that this statement was admissible against the appellant in so far as it admitted his taking away Gulab from the village Torkheda. But on the strength of the other evidence and the conduct of the appellant, they came to the conclusion that the further explanation given by the

appellant Faddi in the said report about the murder of Gulab was false. The Sessions Judge convicted the appellant and it was confirmed by the High Court. In the further appeal to the Supreme Court, their Lordships agreed with the learned Sessions Judge and the High Court. In holding that the report was admissible their Lordships observed:

This report is not a confessional statement of the appellant. He states nothing which would go to show that he was the murderer of the boy. It is the usual first information report an aggrieved person or someone on his behalf lodges against the alleged murderers.

Lower down they observed:

The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court, viz., how and by whom the murder of Gulab was committed, or whether the appellant's statement in Court denying the correctness of certain statements of the prosecution witnesses is correct or not. Admissions are admissible in evidence under Section 21 of the Evidence Act.... It is therefore clear that admissions of an accused can be proved against him.

36. Their Lordships stated that the Privy Council in very similar circumstances, had held in *Dal Singh v. The King Emperor* 44 Ind.App. 137 : 33 M.L.J. 555, that such first information reports were admissible in evidence. Similarly, in this case the statement of the appellant to the doctor, P.W. 8, that the first injury on his toe was caused by Natesa Padayachi biting him about midnight would not be a confession, but it would be an admission, and, according to the above decision, it is admissible.

37. The several pieces of circumstantial evidence proved against the appellant may be summed up briefly thus:

(i) There was motive for the appellant to murder Natesa Padayachi.

(ii) He had opportunity to know that Natesa Padayachi would be alone in his house on the night of 10th July, 1969. He made specific enquiries of P.W. 4 about 9-30 p.m. whether Natesa Padayachi was still in the mill or had returned home and learnt that Natesa Padayachi was still in the mill.

(iii) Natesa Padayachi was murdered that night.

(iv) The towel (M.O. 6) was found near the corpse the next day. The towel has been identified as that of the appellant.

(v) The appellant surrendered at the police station on 12th July, 1969 about 4 p.m. wearing M.Os. 7 and 9. There was human blood on M.O. 9.

(vi) The appellant made a statement (Exhibit P-7) and produced the aruval (M.O.1) from under a culvert. The aruval contained blood, but the blood had disintegrated when it reached the Serologist.

(vii) The appellant was sent to the doctor, P.W. 8. He had, firstly, a small abrasion on the second toe and secondly multiple linear abrasions on the right arm and front of chest. He told the doctor (P.W. 8) that the first injury had been caused by one Natesa Padayachi biting him on the midnight of 10th July, 1969, about 12 O'clock.

38. The appellant does not give any explanation for any of these circumstances.

39. The above pieces of evidence taken together can only lead to one inference that it was the appellant who committed the murder of Natesa Padayachi. We, therefore, confirm the conviction under Section 302 Indian Penal Code. It was a preplanned, cold-blooded murder and, therefore, we confirm the sentence of death as well.