

Jeyasankar Alias Sankar Vs. the State

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Court : Chennai

Decided On : Feb-09-2012

Judge : N.Paul Vasanthakumar; P.Devadass, Jj.

Acts : [Indian Penal Code\(IPC\) 1860](#) - Sections 302, 379, 211, 201; Code of Criminal Procedure(CrPC) - Section 374, 313; vidence Act - Section 27

Appeal No. : Criminal Appeal (MD) No.207 of 2011

Appellant : Jeyasankar Alias Sankar

Respondent : The State

Advocate for Def. : Mr.K.S.Duraipandian, Adv.

Advocate for Pet/Ap. : Mr.Venkatesh Mahadevan, Adv

Judgement :

Prayer

Appeal filed under Section 374 of Criminal Procedure Code to call for the records pertaining to the judgment dated 28.6.2011 in S.C.No.84 of 2011 passed by the learned Additional Sessions Judge (Fast Track Court No.II), Tuticorin and set aside the same.

JUDGMENT

P.DEVADASS,J

1. Accused 1 and 2, in S.C.No.84 of 2011, before the learned Additional Sessions Judge (Fast Track Court No.II), Tuticorin are appellants herein. They challenge their conviction and sentences imposed upon them.

2. For convenience sake, through out the judgment, let us call them A.1 and A.2.

3. The prosecution version as unfolded during trial runs as follows:-

(i). P.Ws.1 and 2 Rajagopal and Amaravathi are spouses. They are residing in Manjalneer Kayal in Tuticorin District. Their last daughter is Subashini. She was unmarried. She was 25 years old. In Palayakayal Main road, they are running 'Sivasakthi Hotel'. Subashini used to assist her father in the hotel business. On 16/9/2010, at about 7.30 p.m., near Periyamadai, her uncle P.W.3 Ganesan saw her walking, holding a cell phone in her hand. When questioned, she told him that she is going to the hotel. P.W.3 told this to P.W.1. He replied that he did not send her. P.Ws.1, 3 and others searched her in vain.

(ii). At about 7.45 p.m., P.W.4 Thirumal, with the help of his torch light, saw Subashini with ear studs, gold chain on her neck and also a cell phone in her hand. She told him that she came to answer nature's call. At about 8 p.m., P.W.5 Patturaj, while coming from the temple, with the help of his torch light, saw A.1 and A.2 coming in front of him. At about 8.30 p.m., P.W.6 Paulraj when went to his land, with the assistance of his torch light, heard A.1 and A.2 talking themselves, 'you have chain', I will have anklet'. They told him that they are urgently going to board a bus.

(iii). Till 18/9/2010 morning, Subashini was not traced. At about 6.30 a.m., there was news that in the coconut thope of P.W.8 Dhanapalan @ Dhanapal, a dead body was found. P.Ws.1 to 3 rushed there and found the charred dead body of a women. They have identified it as that of Subashini by her ear-studd, brass-ring on her hand and iron ring on her leg and also by her face.

(iv). At about 9 a.m., at the Sawyerpuram Police Station, P.W.1 gave Ex.P.1 complaint to P.W.16 Hariharan, Sub-Inspector of Police. He registered a case in

Crime No.141 of 2010 under Section 302 IPC. He despatched the Express FIR (Ex.P.13) to Court through P.W.13 Manthiramoorthy, Special Sub-Inspector. He handed over it to Judicial Magistrate No.I, Thoothukudi at about 2.30 p.m.

(v). P.W.17 Mahimaiveeran, Inspector, Sawyerpuram took up investigation. At the spot, in the presence of P.W.15 Patchaiperal, VAO, Manjalneerkayal and his Assistant Pandi, P.W.17 prepared Ex.P.6 Observation mahazar and drew Ex.P.14 site-plan. In the presence of witnesses, he seized M.O.8 stick, M.O.9 sample soil and M.O.7 small quantity of ash under Ex.P.7 mahazar. In the presence of Panchayatdars, held inquest over the dead body (Ex.P.15 inquest report); examined the material witnesses and recorded their statement; sent Ex.P.4 requisition to Thoothukudi Medical College and Hospital, through P.W.12 Subramanian, Head Constable to perform autopsy. Sections 379 and 211 IPC were added to the case and Ex.P.16 alteration memo was sent to the Court.

(vi). At the spot, P.W.14 Dr.Manoharan conducted post-mortem. He found the following post-mortem injuries:-

Partially charred body of a female. Abdominal and Thoracic cavities exposed. Abdominal and thoracic organs were charred and denatured beyond its recognition. Pelvic cavity exposed out and the internal organs found missing. Part of the pelvic bones charred. Ribs in the front and lateral sides of chest found missing due to postmortem deep burns. Left lower limb found severed at the level of middle of thigh and the remaining part of that limb seen separately. The severed ends of the left lower limb found charred indicating postmortem deep burns. Superficial burns seen over both feet. The right thigh bone exposed out and the thigh muscles found absent indicating postmortem deep burns. Left upper limb below the level of middle of arm and right upper limb below the level of middle of forearm found absent indicating postmortem deep burns. External genitals charred.

(vii). P.W.14 found the following ante-mortem injuries:- (i). A split laceration of size 2 cms x . cms x bone deep seen over the right eyebrow.

(ii). A split laceration of size 4 cms x . cm x bone deep seen at the root of nose.

(iii). A split laceration of size 2 . cms x . cm x bone deep seen in the medial end of left eyebrow.

(iv). A split laceration of size 5 cms x 3 cms x bone deep seen in the occipital region.

(viii). On dissection of skull, scalp and dura:- Scalp in the frontal and occipital regions found confused. Sub arachnoid haemorrhage seen over the left cerebral hemisphere. Frontal lobe of brain lacerated.

(ix). P.W.14 opined that the deceased would appear to have died of complications of blunt injuries over the head and face (Ex.P.5 post-mortem certificate). He also opined that if a person was beaten forcibly with a stick like M.O.11, such injuries are possible.

(x). In the course of his further investigation, on 23/9/2010, at about 2.30 p.m., near Agaram Vilakku bridge, in Manjal Neerkayal, in the presence of P.W.15 and his assistant Pandi, P.W.17 arrested A.1 and A.2. A.1 gave Ex.P.9 confessional statement and A.2 gave Ex.P.10 confessional statement as to the places where certain materials objects were kept. They were recorded by P.W.17 in the presence of said Revenue staff. A.1 produced M.O.1 gold chain and M.O.10 cell phone. P.W.17 seized them under Ex.P.8 mahazar in the presence of the said witnesses. A.2 produced M.Os.3 and 4 silver anklet and gold ingot. P.W.17 seized them under Ex.P.12 mahazar in the presence of said witnesses. The accused took them to Esakiamman temple and produced M.O.11 stick. P.W.17 seized it in the presence of said witnesses under mahazar. At the Police station, P.W.1 identified the said jewels as that of his daughter. P.W.17 sent the accused to the Court for judicial custody and sent the case-properties to the Court. Concluding his investigation, he filed the Final Report for offences under Sections 302, 379 and 201 IPC.

4. The trial Court framed charges under Sections 302, 379 and 201 IPC against A.1 and A.2.

5. To substantiate the charges, prosecution examined P.Ws.1 to 17, marked Exs.P.1 to P.16 and exhibited M.Os.1 to 11.

6. The learned Additional Sessions Judge examined the accused under Section 313 Cr.P.C., on the incriminating aspects appearing in the prosecution evidence. They have denied their complicity in this case. They did not examine any witness nor mark any document.

7. Considering the above evidence, relying on the circumstances projected and Section 27 Evidence Act recovery pressed into service, the learned Additional Sessions Judge, came to the conclusion that the charges have been proved beyond all reasonable doubts and on 28/6/2011 convicted and sentenced them as under:-

ACCUSED CONVICTION SENTENCES IMPOSED

UNDER

SECTION

A.1 (i) 302 IPC Life sentence and fine Rs.1,000/- in default one year rigorous imprisonment

(ii).379 IPC One year rigorous imprisonment

(iii).201 IPC Three years rigorous imprisonment and fine Rs.500/- in default two months rigorous imprisonment.

A.2 (i) 302 IPC Life sentence and fine Rs.1,000/- in default one year rigorous imprisonment

(ii).379 IPC One year rigorous imprisonment

(iii).201 IPC Three years rigorous imprisonment and fine Rs.500/- in default, 2 months rigorous imprisonment.

All the substantive sentences imposed upon them are ordered to run concurrently.

8. Mr.Venkatesh Mahadevan, learned counsel for the appellants submitted that in a case based on circumstantial evidence, each circumstance must run one after the other, without any missing link. Otherwise, the case will not be considered as proved. The learned counsel cited STATE OF UTTAR PRADESH Vs. RAM BALAK AND ANOTHER {(2008) 15 SCC 551} and argued, in this case, the circumstances are not established. Elaborating his submissions, the learned counsel contended as under:-

(i). At no point of time, the accused and the deceased were seen together. The witnesses also spoken that the accused and the deceased were seen separately. In such circumstances, the last seen theory will not arise.

(ii). In Ex.P.1 complaint, P.W.1 did not mention about the gold chain and the silver anklet worn by the deceased, and stated about them only at a later stage.

(iii). Even on 18/9/2010, the accused were in the custody of Police. So their arrest on 23/9/2010 and recovery of material objects based on their confessional statement are just make belief affair. They show that the complainant (P.W.1) and the Investigation Officer (P.W.17) planned to strengthen the prosecution case by introducing the jewels as though they were worn by the deceased prior to her death.

(iv). M.O.10 cell phone has been just introduced to link the deceased with A.1. Incoming and outgoing call details were not produced.

(v). The Section 27 Evidence Act recovery is farce.

(vi). Prosecution has not established its case beyond all reasonable doubts. Thus, the accused are entitled to be acquitted.

9. On the other hand, Mr.K.S.Duraipandian, learned Additional Public Prosecutor submitted that P.Ws.1 to 3 have clearly spoken about the missing of the girl with jewels. P.Ws.3 and 4 have spoken about the deceased having been seen prior to the occurrence. P.Ws.5 and 6 have spoken about the accused having been seen, immediately after the occurrence. There is recovery of gold chain, silver anklet and cell phone based on the disclosure statement of the accused. Prosecution has

proved its case beyond all reasonable doubts. Thus, the findings recorded by the trial Court cannot be faulted. So also, the sentences imposed upon the accused.

10. On 16/9/2010, from 7.30 p.m., P.Ws.1 and 2 Rajagopal and Amaravathi's last daughter Subashini was missing in Manjalneerkayal Village in Tuticorin District. On 18/9/2010, at about 6.30 a.m., in the said village in P.W.8 Dhanapalan @ Danapal's thope, her charred body was found. She died of homicidal violence.

11. According to prosecution, it is a case of murder for gain and A.1 and A.2 with M.O.11 stick beaten her to death, stolen her gold chain, silver anklet, cell phone and to cause disappearance of evidence, burnt the body.

12. To inculcate the accused with the said accusations, prosecution has let in oral and documentary evidence and also exhibited material objects.

13. We have given our anxious consideration to the arguments of both sides. We have carefully gone through the evidence and perused the judgment of the trial Court.

14. Now, the question is whether based on the above evidence, prosecution has established the said accusations against the accused, beyond all reasonable doubts.

15. There is no eye witness to the occurrence. The case is purely based on circumstantial evidence.

16. Sir Alfred Wills in his admirable book Wills' Circumstantial Evidence (Chapter VI) lays down the following rules to be observed in the case of circumstantial evidence:

(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible

with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

17. In *Padala Veera Reddy v. State of A.P.* (AIR 1990 SC - 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

18. In *STATE OF RAJASTHAN Vs. RAJA RAM* (2003) 8 SCC - 180, it is observed as follows:-

8.The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

9. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible

with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan*, *Eradu v. State of Hyderabad*, *Earabhadrapa v. State of Karnataka*, *State of U.P. v. Sukhbasi*, *Balwinder Singh v. State of Punjab* and *Ashok Kumar Chatterjee v. State of M.P.*). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

19. In *SK.YUSUF Vs. STATE OF WEST BENGAL* reported in (2011) 3 SCC (Cri) 620, on the aspect of circumstantial evidence, Honourable Apex Court observed as under:-

32. Undoubtedly, conviction can be based solely on circumstantial evidence. However, the Court must bear in mind while deciding the case involving the commission of serious offence based on circumstantial evidence that the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability that the act must have been done by the accused.

20. Thus, each circumstance must be proved beyond all reasonable doubts. [See *Sanatan Naskar and Another vs. State of West Bengal* (2011) 1 MLJ 687 (Crl.) (SC).] The proved circumstances must form a complete chain unerringly proceeding towards the only conclusion that the accused is the author of the crime

excluding any hypothesis of innocence in his favour. There should not be any missing link.

21. To mulct the accused with criminal liability, prosecution relies on the following circumstances.

(i). The last seen theory

(a). incriminating circumstance just prior to the occurrence (b). incriminating circumstance after the occurrence.

(ii). Section 27 Evidence Act Recovery.

22. Let us see whether prosecution has established these circumstances beyond all reasonable doubts and if proved, whether they form a complete chain, without any missing link unerringly proceeding towards the accused as authors of the crime, excluding any hypothesis of innocence in their favour.

23. As regards last seen theory, in STATE OF UTTAR PRADESH Vs. SATISH (2005 SCC (Cri) 642), Honourable Supreme Court observed as under:-

The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses P.Ws.3 and 5, in addition to the evidence of P.W.2.

24. Again, in RAMREDDY RAJESH KHANNA REDDY Vs. STATE OF A.P. (2006) 3 SCC (Cri) 512, Honourable Supreme Court observed as under:-

The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the Courts should look for some corroboration.

25. In SK.YUSUF Vs. STATE OF WEST BENGAL reported in {(2011) 3 SCC (Cri) 620}, at special page No.627, Honourable Apex Court observed as under:-

The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

26. In the case before us, through P.Ws.3 to 6 Ganesan, Thirumal, Patturaj and Paulraj prosecution seeks to say that just prior to the occurrence and immediately after the occurrence, certain circumstances took place, which are incriminating in nature and they link the accused with the accusations made against them.

27. The occurrence place is near a well surrounded by coconut thope and plantains. The thope belongs to P.W.8 Dhanapal. P.W.3 Ganesan, the maternal Uncle of the deceased stated that on 16/9/2010, at about 7.30 p.m., near Periyamadai, he had seen Subashini coming towards him. At about that time, she was not going towards the said coconut thope. She was seen walking alone. She was not found in the company of the accused.

28. It is the evidence of P.W.4 Thirumal that on 16/9/2010, at about 7.45 p.m., when he had gone to his land, in search of his sheep, with the assistance of torch light, he saw Subashini walking wearing ear-stud, gold chain on her neck and was also having a cell phone. Thereafter, on 18/9/2010, P.W.4 came to know that she was found dead in the coconut thope.

29. P.W.4 belongs to the same Village. He is having his shop next to P.W.1's hotel. By 18/9/2010 morning, he knows that she is dead under tragic circumstances. But, he did not tell anybody for about 10 days that he had seen her

on 16/9/2010 at about 7.45 p.m., walking alone wearing jewels. He admits that he told this to Police after 10 days. It is strange that during pitched darkness P.W.4 specifically noted her ear-stud, gold chain and cell phone. Even according to P.W.4, he had seen her alone. He did not see her along with the accused, nor she was seen going towards P.W.8's thope.

30. P.W.5 Patturaj is residing in the same Village. His evidence is that on 16/9/2010, at about 8 p.m., when he was coming from the temple, A.1 and A.2 crossed him. He did not talk to them. It did not occur to him. He was also provided with a torch light. He did not see them near P.W.8's coconut thope. They were also not seen with the deceased. By the evidence of P.W.5, no incriminating circumstance has been brought out.

31. P.W.6 Paulraj is also residing in the same Village. His evidence is that on 16/9/2010, at about 8.30 p.m., when he went to his land, he had seen A.1 and A.2 coming before him talking 'you have chain', 'I will have anklet'. When P.W.6 asked, they told him that they are in hurry to board a bus.

32. On 18/9/2010, news of Subashini's dead body lying in the thope, spread like a wild fire. P.W.6 knows her family. But, he did not tell anyone for about 10 days as to what he had seen or heard. He told this for the first time to the Police, after ten days. Through P.W.6, prosecution seeks to say that the accused have talked about sharing the booty namely, her jewels. But, it was not established.

33. It is seen that all the above witnesses spoke in a particular pattern. Invariably, each was provided with a torch light. None of them seen the deceased, with any one of the accused while she was alive. In the circumstances, the last seen theory will not arise. Thus, there is missing link in the chain of circumstances woven by the prosecution.

34. The major incriminating circumstance relied on by the prosecution is Section 27 Evidence Act recovery.

35. No amount of confession made to police is admissible to prove an offence. However, to some extent, a relaxation to this Rule has been made in Section 27 of

the Indian Evidence Act, 1872. Under Section 27 of the Act, so much of information leading to the recovery of a material fact alone is admissible. Non-culpatory portion in the confession of an accused alone is admissible.

36. The scope and ambit of Section 27 were illuminatingly stated long ago by the Judicial Committee of the Privy Council in *PULUKURI KOTAYYA V. KING EMPEROR* (AIR 1947 PC 67). It runs as under:-.. It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced, the fact discovered within the Section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and knowledge of the accused as to this, and the informations given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that I will produce a knife concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant

37. Recently, in *MUSTKEEM ALIAS SIRAJUDDEN vs. STATE OF RAJASTHAN* [(2011) 3 SCC (Cri) 473], with reference to Section 27 of the Indian Evidence Act, Hon'ble Apex Court observed as under:-

25. With regard to Section 27 of the Act, what is important is discovery of the materials object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the materials object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

38. It is not all the statements connected with the production or finding of property, are admissible; only, those which lead immediately to the discovery of property, and so far as they do lead to such discovery alone are admissible. What is

admissible under Section 27 of the Evidence Act is ex-culpatory/non-culpatory/non-incriminating part in the confessional statement of the accused. Inculpatory/incriminating part of the confessional statement is totally inadmissible under Section 27 of the Evidence Act.

39. The learned Additional Sessions Judge, marked the following portion in the confessional statement of A.1. (Ex.P.9)

vd;id Tl;of; bfhz;L Bghdhy; Rghrpdpia moj;J bfhiy bra;a gad;gLj;jpa fk;ig kiwj;J itj;jpUf;Fk; nlj;ij milahsk; fhl;o vLj;J M\$h; bra;fpBwd;.

(It means, if he is taken to a place, he will show the place, where he had concealed the stick, which was used to kill Subashini.)

40. Similarly, the learned Additional Sessions Judge marked the following portion in the confessional statement of A.2 (Ex.P.10).

vd;id Tl;of; bfhz;L Bghdhy; Rghrpdpia moj;J bfhiy bra;a gad;gLj;jpa fk;ig kiwj;J itj;jpUf;Fk; nlj;ij milahsk; fhl;o vLj;J M\$h; bra;fpBwd;.

(It means, if he is taken to a place,he will show the place where he had concealed the stick, which was used to kill Subashini.)

41. The evidence of P.W.15 Patchaiperumal, VAO, the attesting witness and P.W.17 Mahimaiveeran, Investigation Officer, who recorded the confessional statement have also been recorded by the learned Additional Sessions Judge on similar line.

42. It is seen that in recording the evidence for the purpose of Section 27 Evidence Act, the learned Additional Sessions Judge, instead of admitting exculpatory portion in the confessional statement, had recorded inculpatory/incriminating part in the confessional statement of the accused. This is not in accordance with Section 27 Evidence Act. What the learned Judge has to do is to dissect the exculpatory portion from the inculpatory portion in the confessional statement and admit only the non-culpatory portion in evidence.

43. Now, let us separate the non-culpatory portion in Ex.P.9 and Ex.P.10 and see whether based on such non-culpatory information any material has been recovered, whether such information and discovery of the fact have been proved, whether they have any connection with the accusation made against the accused.

44. It is the evidence of P.W.17 Mahimaiveveeran, Investigation Officer that on 23/9/2010, at about 2.30 p.m., near Agaram Vilakku bridge, Manjalneerkayal, in the presence of P.W.15 Patchai Perumal, VAO and his Assistant Pandi, he had arrested A.1 and A.2, A.1 gave him Ex.P.9 confession that if he is taken to a place, he will show him the stick. He had also produced him M.O.1 gold chain weighing 28 grams and M.O.10 Samsung cell phone. P.W.17 recovered them under Ex.P.8 mahazar in the presence of said Revenue Staff. Similarly, A.2 gave him Ex.P.10 confession. It was recorded by P.W.17, in the presence of the said Revenue Staff and A.2 produced M.O.3, a pair of silver anklet and M.O.4 gold ingot. P.W.17 seized them under Ex.P.12 mahazar in the presence of said witnesses. From a place near Esakkiamman temple, A.1 and A.2 produced M.O.11 stick. P.W.17 seized it under Ex.P.15 mahazar in the presence of said witnesses.

45. It is stated that on 23.9.2010, based on the confession of A.2, M.O.3 silver anklet of the deceased was recovered. But P.W.3 Ganesan, brother-in-law of P.W.1 had stated that he had seen the silver anklet on the dead body on 18/9/2010 itself. How is it possible.

46. In Ex.P.1 complaint, P.W.1 did not mention that when his daughter left the house, she was wearing gold chain and silver anklet. He and his wife P.W.2 also repeated this in their evidence. They have stated about the gold chain and silver anklet to the Investigation Officer (P.W.17) only on 19/9/2010, when they were re-examined. However, on 18/9/2010, at about 8 p.m., the Investigation Officer sent Ex.P.16 Alteration Memo to the Court informing the inclusion of Sections 379, 201 IPC in F.I.R. In Ex.P.16, missing of 28 gram of gold chain and silver anklet were mentioned. After that, it became a case of murder for gain.

47. Missing of the ornaments were neither mentioned in Ex.P.1 complaint nor stated to P.W.17 on 18.9.2010. Top of it all, in his cross-examination, P.W.1 also admitted that for safety reason, he did not allow his daughter to wear the gold

chain. Then how and why on 18.9.2010, Police had mentioned about the missing of her ornaments in Ex.P.16 Alteration Memo. If we closely read the evidence of P.Ws.1 and 3, we will get the answer.

48. Her dead body was found on the morning of 18/9/2010. The complaint was lodged at about 9 a.m., at Sawyerpuram Police Station. P.W.17 started his investigation at about 10.30 a.m., and he was in the village. In his evidence, P.W.1 had stated that after F.I.R, on suspicion, Police took several persons from the Village and enquired them. In his cross-examination, P.W.3 had stated that it included the accused also. So, the accused were in the custody of P.W.17 when Ex.P.16 Alteration Memo was prepared. The accused were shown as arrested on 23.9.2010. According to P.W.1, on information, on 23.9.2010, he went to the Police Station, seen the accused and identified his daughter's ornaments. According to P.W.17, he re-examined him. P.W.17 admits that he did not send his further statement to Court immediately, but sent it only along with the Final Report.

49. M.O.10 cell phone is stated to have been recovered based on the disclosure statement of A1.

50. It is stated that M.O.10 belongs to Subashini. No proof for this. As regards M.O.10, P.Ws.1 and 2 are inconsistent in their evidence. It is quite strange that P.Ws.4 and 5 have stated that on 16/9/2010, during pitched darkness, with the assistance of torch light, they have specifically seen the cell phone in her hand. The cell phone has been introduced to show that she was in conversation with A.1 thereby a link as between both was attempted to be shown. In this respect, P.W.10 Sunil, Staff of Vodafone Company has been examined. Through his evidence, nothing has been gained by the prosecution. No incoming and outgoing call details between M.O.10 cell phone and another cell phone, probably of A.1 has been produced and proved. Further, it also depends on the duration of cell phone conversation. Further, it also depends on proving of the voice of persons who had cell phone conversation.

51. A.1 and A.2 were stated to have been arrested on 23/9/2010 at Agaram Vilakku, near a bridge in Manjalneerkayal. P.W.15 Patchaiperal, VAO in his cross-examination had stated that the said place is at an higher level and persons

standing in the road can be easily seen from this place. P.W.17 had stated that then he and his subordinates were in their uniform and they went towards the accused walking. Thus, the accused had every opportunity to ran away. However, the evidence of P.Ws.15 and 17 is that on seeing them they stood as it is, so that the confessional statement could be recorded and the recoveries could be effected. In the circumstances, it looks very odd and strange. P.W.15, appears to be an obliging witness to the Police.

52. Thus, from the above, it is seen that the Section 27 Evidence Act recovery is just stage managed and a make belief affair. So, this link in the chain of circumstances has not been proved and the chain projected by the prosecution is found disconnected.

53. In KAILASH GOUR AND OTHERS Vs. STATE OF ASSAM {(2012) 2 SCC 34}, the Honourable Apex Court observed as under:-

It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between the accused may have committed the offence and must have committed the offence which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognised as a human right which cannot be wished away. See NARENDRA SINGH Vs. STATE OF M.P reported in 2004 SCC (Cri) 1893 and RANJITSING BRAHMAJEETSING SHARMA Vs. STATE OF MAHARASHTRA reported in 2005 SCC (Cri) 1057. [emphasis supplied by us]

54. To the same effect, in S.GANESAN Vs. RAMA RAGHURAMAN {(2011) 2 SCC 83}, the Honourable Apex Court observed as under:-

Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India.

55. Dealing with a case of circumstantial evidence, the Court has to be circumspect. A note of caution was sounded by the Hon'ble Supreme Court in RAGHAV PRAPANNA TRIPATHI AND OTHERS Vs. STATE OF UTTAR PRADESH (AIR 1963 SC 74), quoting from R.Vs.HODGE (1838) 2 Lew C C 227:

The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual the more likely was it, considering such matter, to overreach and mislead itself, to supply some little link that is wanting to take for granted some fact consistent with its previous theories and necessary to render them complete.

56. In this case, it is seen that the trial Court had unwittingly fallen into the same dangerous trap, which the Hon'ble Apex Court has cautioned to be guarded against.

57. None of the circumstances woven by the prosecution against the accused has been proved. The chain of circumstances projected by the prosecution is found broken everywhere. They do not form a complete chain unerringly proceeding towards the accused. They do not exclude hypothesis of innocence in favour of the accused. The charges levelled must be proved by valid and legal evidence. Suspicion and surmises, however, strong may not be substitute for legal evidence to establish the charges. The evidence let in do not substantiate the charges levelled against the accused. The prosecution has not proved its case beyond all reasonable doubts. In this view of the matter, we are of the view that the view of the learned Additional Sessions Judge (Fast Track Court No.II), Tuticorin on the evidence adduced is not correct. Consequently, the accused are entitled to be acquitted.

58. In the result,

(i). This Criminal Appeal is allowed.

(ii). The conviction recorded and the sentences imposed upon the appellants in S.C.No.84 of 2011 by the learned Additional Sessions Judge (Fast Track Court

No.II), Tuticorin on 28/6/2011 are set aside.

(iii). Fine amount, if already paid, shall be refunded to him.

(iv). The appellants are acquitted of all the charges. They shall be released forthwith from the prison, if their presence is no longer required in connection with any other case/proceedings.

(v). Consequently, the connected Miscellaneous Petition is closed.

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