

Kumaran Vs. State

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Court : Chennai

Decided On : Apr-19-2013

Judge : K.N.Basha

Appellant : Kumaran

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

19. 04.2013 CORAM THE HON'BLE MR.JUSTICE K.N.BASHA and THE HON'BLE MR.JUSTICE P.DEVADASS CrI.A.No.627 OF 201.1.Kumi @ Kumaran 2.Senba @ Senbagasri Kumar .. Appellants Vs. State rep. by Inspector of Police, Kalapet Police Station, Puducherry. .. Respondent This Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the judgment passed in S.C.No.58 of 2007 on 12.08.2011 by the II Additional Sessions Judge, Puducherry. For Appellants : Mr.V.Gopinath, Senior Counsel, for Mr.G.Saravanan for A-1 and for Mr.L.Mahendran for A-2 For Respondent : Mr.M.R.Thangavelu Addl. Public Prosecutor (Puducherry) - - - - - JUDGMENT P.DEVADASS, J., THE APPELLANTS: A-1 Kumi @ Kumaran and A-2 Senba @ Senbagasri Kumar are challenging their conviction and sentence in the Sessions Case in S.C.No.58 of 2007 rendered by the learned II Additional Sessions Judge, Puducherry. CONVICTION AND SENTENCES:

2. They were convicted and sentenced as under: Accused Conviction Sentence A.1 (i) 454 IPC (ii) 392 IPC (iii) 302 IPC r/w 34 IPC (i) 7 years Rigorous Imprisonment and fine Rs.5,000/-, in default, 1 year simple Imprisonment. (ii) 7 years Rigorous Imprisonment and fine Rs.5,000/-, in default, 1 year Simple Imprisonment. (iii) Life and fine Rs.5,000/- and in default, 1 year Simple Imprisonment. A.2 (i) 454 IPC (ii) 392 IPC (iii) 302 IPC r/w 34 IPC (i) 7 years Rigorous Imprisonment and fine Rs.5,000/-, in default, 1 year Simple Imprisonment. (ii) 7 years Rigorous Imprisonment and fine Rs.5,000/-, in default, 1 year Simple Imprisonment. (iii) Life and fine Rs.5,000/- and in default, 1 year Simple Imprisonment. All the sentences were directed to run concurrently. PROSECUTION CASE:

3. The case of the prosecution, in brief, is as follows :-

(1) P.W.1 Boopathy and deceased Manimozhi are spouses. Their daughter is P.W.2 Anuja. They were residing at Door No.30-A, East Coast Road, Chinnakalapet, Puducherry.

(2) P.W.1 is a Company Secretary in a Company in Puducherry. Then P.W.2 was studying VIII Standard in Patrick School, Puducherry. Manimozhi was running Venkateswara Internet Centre and STD Booth in her house. P.W.3, Muthamizh Selvan, lecturer in S.R.M. College, Kattankulathur, Chennai is their family friend. Whenever he visits Puducherry for paper correction work, he used to stay in their house.

(3) On a day, near the deceased's house, in a motor bike accident, A-2 got injured. He introduced himself as Dheena @ Dinesh to the deceased. She gave him first aid. In 2001, October, on a day, A-1 and A-2 visited her house. At about 6.30 p.m., the deceased introduced A-2 to P.W.1. A-2 promised a gift to P.W.2.

(4) M.O.4, a small female statue, kept in the front portion of P.W.17 Raveena's Restaurant, in Mission Street, Puducherry was missing.

(5) Subsequently, the accused gave M.O.4 statue to P.W.2. Accused frequented Venkateswara internet centre. P.W.2 created email I.D for them. In Ex.P.2

telephone diary, P.W.2 entered (Ex.P.9) A-2 Dinesh's cell phone No.9840124473.

(6) On 14.2.2002, P.W.23 Umapathy, Manager, 'Aditya Hotel', in Kamarajar Salai, Puducherry booked a room for A-1. A-1 signed in the Hotel Receipt Book (See Ex.Ps.31 to 35). A-2 was also with him. In the evening, over phone, A-1 informed P.W.23 that as he intend to vacate the room, make ready the bill. Thereafter, the room was vacated.

(7) The deceased maintained Ex.P.3 long size Note Book. In this, she used to enter the date, time and name of persons visiting her internet centre. On 14.2.2002, at 4.40 p.m., the deceased made entry (Ex.P.5) in the said note book that Dheena(A1) visited the internet centre.

(8) On 14.2.2002, P.W.3 was staying in deceased's house. At about 8 a.m., P.W.1 left the house with P.W.2. He left her in the school and gone to Hotel Annamalai in Puducherry to attend a seminar. At about 10 a.m., P.W.3 also left the house for Pondicherry University for paper correction work.

(9) At about 4.30 p.m., P.W.3 returned to deceased's house. Then, the deceased was talking with A-1. She introduced him to P.W.3. Within few minutes, A-2 came from the internet centre. The deceased gave them advice. Thereafter, they left for Kalapet. The deceased told P.W.3 that they are like her brothers and they are residing in Chennai. After shutting down the computer in the internet centre, the deceased went upstairs to water the plants.

(10) At about 5.25 p.m., P.W.15, Karpagam came to the STD booth in the deceased's house. Made call. Enquired about the charges. She had seen A-2. She placed Rs.2 and left. Thereafter, A-1 and A-2 came to the Internet centre. A-2 told P.W.3 that the internet is not working. P.W.3 tried to operate it. The deceased came. She told P.W.3 that she will take care of it. Thereafter, P.W.3 went upstairs to take rest.

(11) At about 6.45 p.m., P.W.3 came to the hall. The deceased was not seen either in the hall, or in the internet centre or in the kitchen. However, he had seen her dead body in the bedroom with injuries on the right side of her neck and

abdomen.

(12) Over phone P.W.3 informed the death of his wife to P.W.1. At about 7.45 p.m., P.W.1 came. Seen the dead body. Her gold chains were missing. P.W.2 also came.

(13) At about 9 p.m., at the Kalapet Police Station, P.W.1 gave Ex.P.1 complaint to Jeyabalan, Sub-Inspector. He registered this case in Crime No.13 of 2002 under Sections 454, 302 and 392 IPC (Ex.P.52 F.I.R.)

(14) P.W.33 Inspector Ramaraju received a copy of the FIR. He took up his investigation. Visited the scene place. P.W.27 Kannan, police photographer, photographed the scene place. Sniffer-dog went around the scene place. P.W.26, Ramalingam, Fingerprint Expert, lifted 7 chance fingerprints from the computer in the internet centre. He photographed them. Sent them to his Director (Ex.P.37 series). In the presence of P.W.11 Elumalai and one Mohan, P.W.33 prepared Ex.P.53, observation mahazar. Drew Ex.P.54, rough sketch. Recovered a white rope (M.O.3), bloodstained bed-sheet (M.O.17) under Ex.P.55, mahazar. In the presence of panchayatdars including P.W.6, Nataraja Chettiar, P.W.33 held inquest over the dead body of the deceased (Ex.P.11, inquest report). He sent the dead body with his requisition through P.W.28 Head Constable Janarthanan to the Govt. General Hospital, Puducherry for conducting post-mortem.

(15) P.W.33 examined the material witnesses and recorded their statements. From the scene house, in the presence of P.W.18 Guna and another person, P.W.33 seized Ex.P.2 Telephone Diary, Ex.P.3 Note book and M.O.4. P.W.2 told P.W.33 about A-1 and A-2 and their acquaintance with her mother. P.W.33 formed a party to arrest them. He produced the seized-properties to Court.

(16) On 15.2.2002, at about 11.30 a.m., at the said Hospital, P.W.30 Dr.Balaraman performed autopsy on the dead body of the deceased and noticed the following injuries : (1)Incised wound 2 x 0.5 cm x 1 cm below right eyebrow entering right eye ball. (2)Transversely placed irregular incised wound 13 x 4 x 7 cm over front side of neck at thyroid cartilage level cutting larynx, blood vessels of neck completely exposing partly cut prevertebral muscles. (3)Three incised

wounds 2x1/2 x 4cm, 2x1x4 cm, 2x1/2x5cm over left side of neck 3 cm below mandible. (4)Linear abrasion 13x1/2x1/2 cm over left fore (5)Incised wound 3x2x2cm over midline of lower abdomen. (6)Incised wound 1.5x0.5x0.5 cm over left side of vagina (7)Abrasion 7x0.5cm over back of chest right side.

(17) P.W.30 opined that she died of shock and hemorrhage due to injuries to the neck. After post-mortem, P.W.33 received the dresses (M.Os.5 to

8) recovered from her dead body. (18) On 25.2.2002, A-2 came to P.W.12 Uttamchand's 'K.Jawarkalal Gulabchand Jain' Pawn Broker's shop in Kancheepuram. He pledged M.O.2 gold chain under Ex.P.14, Pawn ticket, received RS.4000/- and signed in the Pawn ticket (Ex.P.16). (19) On 5.3.2002, at about 6.45 p.m., near the Tamil Nadu Express Bus-stop, Parrys Corner, Chennai, P.W.29, Selvam, Sub Inspector, arrested A-1 and A-2. At about 10.45 p.m., he handed over them to P.W.33. (20) On 6.3.2002, at about 2.15 p.m., in the presence of P.W.16 Arumugam and one Raghunath, A-1 gave Ex.P.20 confessional statement to P.W.33. Thereafter, A-2 gave Ex.P.21 confessional statement to him. At about, 11 a.m., at the instance of A-2, in pursuance of his confessional statement, in the presence of P.W.16 Arumugham and Raghunath, P.W.33 seized M.O.2 gold chain and Ex.P.14, Pawn ticket from P.W.12 under Ex.56 Mahazar. At about 6.30 p.m., P.W.33 produced A-1 and A-2 to the Court for judicial custody. P.W.33 altered the section of law in the F.I.R. (Ex.P.57, Alteration Report) and submitted the same to the Court. (21) On 7.3.2002, P.W.33 gave requisition to Judicial Magistrate No.1, Puducherry to conduct Test Identification Parade (T.I.P) for the arrested accused. On 12.3.2002, at about 3 p.m., at the Central Prison, Puducherry, P.W.31 Hemalatha Daniel, Judicial Magistrate No.1, Puducherry, conducted T.I.P. P.Ws.1 to 3 identified A-1 and A-2 (Ex.P.50 T.I.P. Report). (22) On 13.3.2002, P.W.33 obtained A-1 and A-2 to his custody for 3 days. On the same day, at the instance of A1, in pursuance of his confessional statement, in the presence of P.W.16 and Raghunath, from the Police quarters in Sembiam, Perambur, Chennai, P.W.33 seized M.O.9 Yamaha Motor cycle under Ex.P.22, mahazar. On 14.3.2002, at about 6 p.m., at the instance of the accused, in the presence of said witnesses, from the upstairs portion of a house in Ram Colony, Tiruppur, P.W.33 seized M.O.13 Nylon bag. It contained M.O.10 knife and

bloodstained clothes. A-2 and A-1 produced their bloodstained Jeans pants, M.Os.15 and 12 respectively and P.W.33 seized them under Ex.P.24 mahazar. At about 7.30 p.m., at the instance of A-1, in pursuance of his confessional statement, in the presence of said witnesses, P.W.33 seized M.O.1 Thali chain from P.W.21, Dhanapal, owner of Ponmeena Jewellery in Eswarankoil street, Tiruppur under Ex.P.29, mahazar. P.W.33 brought the accused and the case-properties to his station. (23) On 15.3.2002, P.W.33 examined P.W.30 with reference to M.O.10 knife. P.W.1 identified him his wife's jewels. P.W.33 produced the case-properties and the accused to the Court for custody. He also gave requisition to the court to send the case-properties to the Lab for analysis. (24) After P.W.33, P.W.32 Prasad Rao, Inspector continued the investigation. On 19.9.2002, he examined P.W.23 and seized the cash book and the Room Register of Hotel Aditya, Puducherry. Thereafter, Inspector Vijayasundaram and after him, P.W.34 Inspector, Arumugam, conducted the investigation. (25) P.W.26 received sample prints of A-1 and A-2 from the Inspector. On comparison, the chance prints tallied with the sample fingerprints of A-1 (Ex.P.51 report). (26) Finally, P.W.35, Purushothaman, Inspector conducted the investigation. Examined P.W.26 and recorded his statement. Perused the chemical report Ex.P.58 and the entire case records and filed Final Report against the accused under Sections 454, 302, 392 r/w 34 IPC. EXAMINATION UNDER SECTION 31 Cr.P.C. :

4. The trial court examined the accused under Section 313 Cr.P.C. on the inculpatary aspects in the prosecution evidence. They denied their complicity in this case. PROSECUTION EVIDENCE :

5. To substantiate the charges framed against the accused, prosecution examined P.Ws.1 to 35, marked Exs.P.1 to P.58 and exhibited M.Os.1 to 17. The accused marked Ex.D.1, copy of deposition of P.W.16 given in S.C.No.619 of 2005, Fast Track Court not I, Madurai. TRIAL COURT'S FINDINGS:

6. Analysing the said evidence, the trial court came to the conclusion that the incriminating circumstances projected are proved and the prosecution has established its case beyond all reasonable doubts and convicted and sentenced the accused, as already stated. TRIAL COURT FINDINGS: assailed.

7.Mr.R.Gopinath, learned Senior Counsel for the appellants contended that the chain of circumstances weaved by the prosecution in this case is found broken everywhere and they do not complete the chain. The learned Senior Counsel contended that the prosecution version that P.W.3 lastly seen the deceased in the company of the accused cannot be believed as at about that time, many persons have visited the scene house, P.W.1, who already knows A-1 and A-2, has not mentioned them in the F.I.R. The F.I.R. is completely bald as to the assailants and their description. The learned Senior Counsel further contended that while the accused were in the police custody, they were shown to P.Ws.1 to 3 and after seen the photographs and names of accused in the Newspapers and in T.V., have identified them in the Test Identification Parade. In the circumstances, the Test Identification Parade conducted is valueless and is of no use to prosecution. In this respect, the learned Senior Counsel also cited RAVI @ RAVICHANDRAN VS. STATE [(2007) 2 MLJ (CRL) 367 (SC)] and AMITSINGH BHIKAMSINGH THAKUR VS. STATE OF MAHARASHTRA [(2007) 2 MLJ (Crl) 216] (SC). 8.The learned Senior Counsel also contended that the entry in Ex.P.3, Note Book is made for the occasion. The Fingerprint evidence is also of similar variety. There is nothing to show that the Investigating Officer has taken the specimen fingerprints from the accused following genuine procedure. The Section 27 Evidence Act Recovery of jewels, knife and bloodstained clothes of the accused are all stage-managed. The evidence of P.Ws.12, 16 and 21 shows that the recovery is tainted. Finally, the learned Senior Counsel submitted that none of the circumstances projected by the prosecution has been proved and the prosecution has miserably failed to prove its case beyond all reasonable doubts. TRIAL COURT FINDINGS: supported 9.Mr.M.R.Thangavelu, learned Additional Public Prosecutor (Puducherry) referred to the evidence of P.Ws.1 to 3, recovery of jewels based on the confessional statement of the accused and tallying of chance prints lifted from the scene of crime with the specimen fingerprints of A-1, entry in Ex.P.3 Note book made by the deceased that on the occurrence day, visit of A-1 and A-2 to house of the deceased, Aditya hotel records and the medical evidence and submitted that cumulative consideration of all these proved incriminating circumstances results in the irresistible conclusion that the accused have murdered her for gain. CONSIDERATION :

10. We have anxiously considered the submissions of both sides, carefully scrutinized the entire materials on record and perused the impugned judgment of the Trial Court. HOMICIDE :

11. On 6.45 p.m., on 14.2.2002, in her house, at Door No.30-A, East Coast Road, Chinnakalapet, Puducherry, Manimozhi, wife of P.W.1 Boopathy and mother of P.W.2 Anuja, was found dead with injuries on her neck and abdomen. The autopsy conducted on her dead body by P.W.30 Dr.Balaraman revealed that she died of homicidal violence. MURDER FOR GAIN :

12. The evidence of P.Ws.1 and 2 very clearly discloses that then, the jewels were found missing from the dead body of the deceased. It is a clear case of murder for gain. PROSECUTION VERSION :

13. According to prosecution, A-1 and A-2 befriended the deceased, on the occurrence day, they have visited her house, under the pretext of using the Internet centre and murdered her and stolen away her jewels, M.Os.1 and 2. TYPE OF EVIDENCE :

14. There is no eyewitness to the occurrence. Prosecution sought to prove its case based on circumstantial evidence. CIRCUMSTANTIAL EVIDENCE : Principles stated.

15. It would be useful to note down the various requisites/tests propounded by the Hon'ble Apex Court in assessing and accepting circumstantial evidence. (i) In Hanumant Govind Nargundkar v. State of M.P.(AIR 195.SCC 343), it was observed as under: "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances 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." (ii) In STATE OF RAJASTHAN Vs. RAJA RAM [2003 (8) SCC 180], it was observed as under:- "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. (iii) In SK.YUSUF Vs. STATE OF WEST BENGAL [2011 (3) SCC (Cri) 620], 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." (iv) In STATE OF TAMIL NADU Vs. JOHN DAVID [2011 (3) CTC 104], NAVARASU MURDER case, the Hon'ble Apex Court laid down the following guidelines in considering the circumstantial evidence. "19. each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved

must form a chain of events from which the only irresistible conclusion that could be drawn is the guilt of the Accused and that no other hypothesis against the guilt is possible." THE CIRCUMSTANCES :

16. In this case, to implicate the accused, prosecution relies on the following circumstances : (i) Last seen theory. (ii) Test Identification Parade Report. (iii) Entry in Ex.P.3, Note book. (iv) Stay of A-1 and A-2 in Hotel Aditya, Puducherry. (v) Fingerprint evidence (vi)Section 27 Evidence Act Recovery. THE YARDSTICK :

17. Now, keeping the tests propounded by the Hon'ble Supreme Court in our mind, let us proceed to see the said circumstances one by one and see whether they have been proved and whether the proved circumstances cumulatively taken, form a complete chain without any missing link unerringly proceeding towards the only conclusion that the accused are the killer of deceased Manimozhi excluding any hypothesis of innocence in their favour. LAST SEEN THEORY :

18. The prosecution projected that on the occurrence day, in the scene house, the deceased was lastly seen alive in the company of A-1 and A-2. If this is established, it will be an incriminating circumstance as against the accused.

19. According to P.Ws.1 and 2, the husband and daughter of the deceased, 6 or 7 months prior to the occurrence, A-1 and A-2 came to their house, the deceased introduced A-1 and A-2 to them and subsequently, A-1 and A-2 have also gifted M.O.4, statue to P.W.2. P.W.3 Muthamizh Selvan, a family friend of the deceased, whenever visits Puducherry, used to stay in her house. P.W.3 had stated that on the occurrence day, namely, on 14.2.2002, at about 4.30 p.m., in the deceased's house, he had seen A-1 and A-2 along with the deceased and were talking and he had gone upstairs to take rest. Thereafter, only at about 6.45 p.m., he had seen her dead body in the bed room. 20.P.W.15, Karpagam, a neighbour of the deceased, on the occurrence day, at about 5.30 p.m., came to the scene house to make a call in the STD booth. P.W.15 also stated that then she had seen A-1 and A-2 there. 21. Thus, the evidence of P.Ws.1 to 3 and 15 shows that the identity of A-1 and A-2 was already known to them. 22. In his cross-examination, P.W.3 admits that at about 5.25 p.m., a lady came to the scene house and after 15

minutes she left. In her cross examination, P.W.15 also admits that when she came to the scene house, there were many male and female persons. Thus, it is seen that on the occurrence day, between 5.30 p.m. and till P.W.3 left upstairs, several persons have come to the scene house. Thus, it cannot be said that during that time, in the scene house, A-1 and A-2 alone were exclusively with the deceased. 23. According to P.W.3, at about 6.45 p.m., nobody was present in the scene house and her dead body was found in the bedroom. On his intimation, P.W.1 and subsequently P.W.2 came there. Thereafter only, at about 9 p.m., P.W.1 gave Ex.P.1 complaint to police. As stated already, as per P.W.3, few hours prior to seeing her dead body, in the scene house, he had seen A-1 and A-2 along with the deceased and the deceased also introduced them to P.W.3 and A-1 and A-2 were already known to P.Ws.1 and 2. In such circumstances, there would have been mentioning of A-1 and A-2 and their details in the FIR. However, they were not named in the FIR. Not even their description has been given in the FIR. Further, it is mentioned that somebody had murdered her. As regards the assailants of the deceased, the FIR is completely bald. This falsifies the prosecution version that the deceased was lastly seen alive in the scene house in the company of A-1 and A-2. Thus, the last seen theory projected by the prosecution has not been established. ENTRY IN EX.P.3 NOTE BOOK :

24. According to P.Ws.1 and 2, A-2 posed himself as Dinesh @ Dheena to the deceased and he was also so introduced by the deceased to them in that name only. That is also the version of P.W.3. 25. In her house, besides STD booth, the deceased was running Venkateswara Internet centre. Ex.P.3 long size Note Book is stated to have been maintained by the deceased for entering the date, time and name of persons visiting the internet centre. At its page 19 (Ex.P.5), as against the date '14th', name 'Dinesh' and the time 'from 4.20 to 4.40' has been entered. According to P.W.2, it is in the handwriting of her mother. 26. It is seen that there were many corrections and interpolations in the said Note book and the date '14th' has been inserted at a corner of the page in different ink. In the previous pages, dates were not written. Thus, the entry in Ex.P.5 implicating A-2 has not been proved. T.I.P. :

27. On 5.3.2002, A-1 and A-2 were arrested by P.W.29 Selvam, S.I. of Police, in Chennai and he handed over them to P.W.33, the Investigating Officer Inspector Ramaraju. On 7.3.2002, P.W.33 gave requisition to the Magistrate to conduct Test Identification Parade (T.I.P.). On 12.3.2002, at the Central Prison, Puducherry, P.W.31, Hemalatha Daniel, Judicial Magistrate not I, Puducherry conducted T.I.P. As per her evidence, at the T.I.P., P.Ws.1 to 3 have identified A-1 and A-2. 28.A-1 and A-2 were in the custody of police on 5.3.2002 and on 6.3.2002. P.W.1 admits that on 7.3.2002, he had seen the photographs of A-1 and A-2 with their names in Newspapers and in T.V. His daughter P.W.2 was living with him. She also admits about the said news items in the dailies and TV. However, she had stated that she had not read the newspaper. So also is the evidence of P.W.3. In view of their closeness to P.W.1, in this respect P.Ws.2 and 3 are hardly believable. 29.In the circumstances, with such previous knowledge of the identity of A-1 and A-2, their subsequent identification in the T.I.P. has become a valueless exercise. In the circumstances, P.Ws.1 to 3 identifying A-1 and A-2 in the T.I.P. loses its evidentiary value [See : RAVI @ RAVICHANDRAN VS. STATE [(2007) 2 MLJ (CRL) 367 (SC)] and AMITSINGH BHIKAMSINGH THAKUR VS. STATE OF MAHARASHTRA [(2007) 2 MLJ (Crl) 216 (SC)]. 30.Further, identification of the accused in the Trial Court is the substantive evidence and their prior identification during investigation before T.I.P. is not equivalent to such substantive evidence and T.I.P. evidence furnishes only corroborative evidence to the substantive evidence. As seen already, although P.Ws.1 to 3 having already known the identity of A-1 and A-2 and P.W.1 having not mentioned the names of A-1 and A-2 or at least their description in the FIR, identifying them in the T.I.P. shows that their such identification is a pre-arranged one. In the circumstances, P.Ws.1 to 3 identifying A-1 and A-2 in the T.I.P. will not be a corroborative piece of evidence for the subsequent dock identification by P.Ws.1 to 3. FINGER PRINT EVIDENCE :

31. P.W.26, Ramalingam, Fingerprint Expert, lifted 7 chance prints from the computer in the internet centre in the scene house on 14.2.2002. Subsequently, he compared them with the specimen fingerprints of A-1 and A-2 and found the specimen fingerprints of A-1 tallied with the said chance prints. 32.There is no explanation as to when, how and by whom the specimen fingerprints were taken

from the accused. There is no clear cut evidence as to how specimen fingerprints reached P.W.26. 33.Further, as per the evidence of P.Ws.1 and 2, A-1 and A-2 very often frequented their house and also used the computer in the internet centre. Even P.W.2 created email I.Ds. for them. In the circumstances, lifting of chance fingerprints from the computer in the internet centre does not look odd and in such circumstances, the said fingerprint evidence will not be an incriminating circumstance. Thus, the said fingerprint evidence does not strengthen the prosecution version of the case. STAY IN ADITYA HOTEL :

34. According to P.W.23, Umapathy, Manager, Aditya Hotel, Puducherry, on 14.2.2002, A-1 booked a room in the hotel, A-2 was also seen with him and in the evening, they have vacated the room. The cash book and the hotel admission register were also produced. However, P.W.23 is not able to identify the accused. Further, at the most, it would show that on 14.2.2002, they have stayed in it. But, that is not enough to show that their such stay have direct connection or bearing with the death of the deceased in the scene house. In the circumstances, the evidence of P.W.23 and the Hotel records also does not strengthen the prosecution version of the case. SECTION 2 EVIDENCE ACT RECOVERIES :

35. The prosecution projects recovery of M.Os.1 and 2, gold chains stated to be belonging to the deceased, M.O.10, knife as weapon of offence and the bloodstained clothes of A-1 and A-2, i.e., M.Os.11 to 15 and a Motor bike (M.O.9), based on the confessional statement of A-1 and A-2. Prosecution pressed into service these items as recoveries effected for the purpose of Section 27 of the Evidence Act. 36.As per Section 25 of the Evidence Act, no amount of confession made to police is admissible except to the extent provided in Section 27 of the Act. It is a proviso in the nature of an exception to the total bar in Section 25 and 26. As per Section 27, so much of information (ex-culpatory) leading to recovery of fact alone is admissible. Thus, the genuineness and truthfulness of Section 27 Evidence Act Recovery must be ensured / proved by the prosecution. 37.On 5.3.2002 at Chennai, A-1 and A-2 were arrested. According to P.W.33, on the next day, at Kalapet Police Station, in the presence of P.W.16 Arumugam, he recorded Ex.P.20, confessional statement from A-1 and Ex.P.21, confessional statement from A-2 and in pursuance of that, he had effected the above recoveries. 38.On

6.3.2002, at the instance of A-2, at Kancheepuram, from the Pawn broker P.W.12, Uttamchand, M.O.2 gold chain and Ex.P.14, Pawn ticket were stated to have been recovered under Ex.P.56 mahazar. Thereafter, at the instance of A-1, on 13.3.2002, from the police quarters in Sembiam, Perambur, Chennai, M.O.9 Yamaha motor cycle has been seized. On the next day, in a house in Ram Colony, Tiruppur, at the instance of A-2, M.O.10 knife and M.O.15, bloodstained Jeans Pant and at the instance of A-1, M.O.12 bloodstained Jeans Pant, were recovered under Ex.P.24 mahazar. At the instance of A-1, M.O.1, Thali chain has been recovered from P.W.21 Dhanabal from his jewellery shop in Tiruppur under Ex.P.29 mahazar. For all these recoveries, P.W.16 is the witness. 39. According to P.Ws.33 and 16, it is seen that M.O.2 chain has been recovered from P.W.12 on 5.3.2002. However, P.W.12 states that on 2.3.2002 police came to his shop in a Jeep and seized the gold chain from his shop. P.W.12 also disputed that M.O.2 has been recovered from his shop. P.W.21 did not produce any document to show that he had purchased M.O.1 chain from the accused. In his cross-examination, he also admits that he could not say when and from whom, he had purchased it. 40. Recovery witness P.W.16 Arumugam is residing next to Kalapet police station. He is a mechanic. He admits that he has much acquaintance with police and they used to repair their vehicles with him. Thus, P.W.16 is at their mercy. In the circumstances, it cannot be denied that he is a Paniwala (Stock witness) to police, their obliging witness. In the circumstances, he cannot be an independent witness to prove the recording of confessional statement and recovery of the properties effected in pursuance of the information contained in the statement of the accused. 41. In the circumstances, we have no hesitation to hold that the Section 27 Evidence Act Recovery pressed into service in this case is planted and it is tainted. We must eschew it from our zone of consideration. CONCLUSION :

42. De hors the said circumstances projected by the prosecution, which were not proved, nothing remains further to implicate the accused either with the death of the deceased or missing of her jewels. 43. Suspicion, however, strong cannot be a substitute for legal proof. When charges are serious, the Court must be serious of proving those charges. The charges cannot be proved by suspicion. However, it may be weighty. 'Might be' is not equivalent to 'must be'. Charges must be proved beyond all reasonable doubts. 44. In this case, prosecution has not established its

case beyond all reasonable doubts. Thus, the findings of the trial court are required to be unseated. NET OUTCOME :

45. In the result, this Criminal Appeal is allowed. The appellants are acquitted from the charges. The conviction recorded and the sentences imposed on them by the learned II Additional Sessions Judge, Puducherry in S.C.No.58 of 2007 are set aside. The appellants shall be released from jail forthwith, if their further custody is no longer required in connection with any other case / proceedings. Fine amount, if paid already, shall be refunded. (K.N.B., J.,) (P.D.S., J.,) 19.04.2013 Index : Yes Internet : Yes rrg/vvk To 1.The Principal Sessions Judge, Puducherry. 2.The II Additional Sessions Judge, Puducherry. 3.The Superintendent, Central Prison, Puducherry. 4.The Inspector of Police, Kalapet Police Station, Puducherry. 5.The Public Prosecutor (Puducherry), High Court, Madras. 6.The Section Officer, Criminal Section, High Court, Madras. K.N.BASHA, J., and P.DEVADASS, J., rrg/vvk JUDGMENT IN CrI.A.No.627 o

19. 04.2013

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