

Inspector Of Police, Tamil Nadu vs John David on 20 April, 2011

Equivalent citations: 2011 AIR SCW 2764, 2011 CRI. L. J. 3366, AIR 2011 SC (CRIMINAL) 1135, 2011 (3) AIR KANT HCR 366, (2012) 2 BOMCR(CRI) 542, (2011) 102 ALLINDCAS 242 (SC), 2011 (102) ALLINDCAS 242, 2011 (2) SCC(CRI) 647, 2011 (4) SCALE 878, 2011 (5) SCC 509, (2011) 2 CRILR(RAJ) 640, (2011) 4 KCCR 377, 2011 CRILR(SC&MP) 640, (2011) 3 MH LJ (CRI) 486, 2011 (1) MAD LW(CRI) 681, (2011) 2 CURCRIR 231, (2011) 2 UC 949, (2011) 3 CHANDCRIC 219, 2011 CRILR(SC MAH GUJ) 640, (2011) 3 MAD LJ(CRI) 725, (2011) 49 OCR 468, (2011) 3 RECCRIR 272, (2011) 4 SCALE 878, (2011) 2 DLT(CRL) 327, (2011) 73 ALLCRIC 978, (2011) 2 ALLCRILR 477, (2011) 2 CRIMES 201, 2011 (2) ALD(CRL) 635

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Bench: Mukundakam Sharma, Dalveer Bhandari

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 384 OF 2002

Inspector of Police, Tamil Nadu

.... Appellant

Versus

John David

...Respondent

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1.This appeal is directed against the judgment and order dated 05.10.2001 passed by the High Court of Madras whereby the High Court has allowed the appeal filed by the respondent herein. The High Court acquitted the respondent under Sections 302, 364, 201 and 342 of the Indian Penal Code, 1860 (for short "IPC") by reversing the Judgment and order dated 11.03.1988 rendered by the Court of Principal Sessions Judge, Cuddalore in Sessions Case No. 63 of 1997.

2.The facts of this case are very shocking and very distressing.

Murder is committed of a young boy, the only son of his parents, who at the relevant time was studying for a medical degree. The manner in which he was killed and his dead body was disposed of after cutting it into different pieces was very gruesome and ghastly. The person in the dock and who was accused of the crime was another senior student in the same campus.

3.Brief relevant facts leading to the registration of the first information report and giving rise to the present appeal are being set out hereunder.

4.In the academic year of 1995-96 the respondent-accused was studying in the senior first year course of MBBS and the deceased-Navarasu, son of Dr. P.K. Ponnusamy [PW-1], a retired Vice-Chancellor of Madras University, was studying in the junior first year course of MBBS in Raja Muthiah Medical College, Annamalai University, Annamalai Nagar. The respondent was staying in room no. 319 of KRM hostel and the deceased was staying in room no. 95 in E.1 Malligai Hostel belonging to the same medical college campus. PW-1 returned from his foreign trip on 07.11.1996 and was waiting for the arrival of his son-Navarasu from college to celebrate Diwali which in that relevant year fell on 10.11.96. When Navarasu did not return home till 09.11.1996, PW-1 started enquiring from the friends of his son, available at Madras but no information of his whereabouts could be gathered by the father.

PW-1 then on 09.11.1996 rang up the university authorities to find out and ascertain the whereabouts of his son. When he was informed that the college authority found his hostel room locked and when it was broken upon, it was found that his belongings along with a small box were lying in the room but he was not available in the room. The college authorities and the father were of the opinion that Navarasu had not left for Diwali to Madras. PW-1 thereafter rushed to the University on 10.11.96 and made a complaint of missing of his son at about 11.30 p.m. on 10.11.96 which was registered as Crime No. 509 of 1996 [Exhibit-P1].

5.While this process was going on and without the knowledge of Annamalai Nagar Police, a torso was recovered at about 8.30 a.m. on 07.11.1996 by G. Boopahty, Inspector of Police, E.5 Pattinapakkam [PW-55], from the PTC Bus Depot at Mandaiveli, Madras based on the information given by Prakash [PW-53], conductor of the bus route NO. 21G. The said recovered torso was sent for post-mortem after inquest. The Annamalai Nagar Police after registering the missing report

started investigation and during the course of such investigation gathered materials and also received information from various persons including students of the college pointing the guilt towards the accused, who was also found absconding from the college premises from 12-14.11.1996. On 14.11.1996 the accused surrendered himself before the Judicial Magistrate, Mannargudi. The message of his surrender was conveyed to the Annamalai Nagar PS, which got the police custody for five days of the accused from 18.11.1996. On 19.11.1996 at about 1.30 a.m. the accused gave a confessional statement stating that he has put the severed head of the deceased in the boat-canal within the University campus. Pursuant to the said confession, the head was also recovered. Annamalai Nagar PS on 20.11.1996 asked E5. Pattinapakkam PS for sending the records connected with the torso recovered at Madras on the suspicion that it may belong to the severed head of the deceased-Navarasu, which was recovered at the instance of the accused. Dr. K. Ravindran [PW-66] conducted autopsy/post-

mortem of the head at 10.00 am on 21.11.1996. On 22.11.1996 a message was received from Villupuram Control Room which was forwarded to Annamalai Nagar PS which mentioned that three human bones femur, tibia and fibula have been recovered at 1.30 a.m. on 21.11.1996 from the sea-

shore of Konimedu of Merkanam based on the information given by the concerned Village Administrative Officer-Nagarajan [PW-43]. Post mortem of the limbs were conducted by Dr. Srinivasan [PW-45] and later limbs were sent to PW-66. PW-66 after examining the severed head, the torso and three human bones above mentioned, found that there are scientific materials to hold that they belong to a single individual and also the fact that they belong to deceased-Navasaru. The father of the deceased PW-1 and Thandeeswaran [PW-60], nephew of PW-1, also identified and confirmed that the head and torso are of the deceased. For confirming the said fact, the sample blood of PW-1 and his wife Baby Ponnusamy [mother of Navasaru] was examined by Dr. G.V. Rao [PW-77] at Hyderabad by DNA test. PW-77 compared the tissues taken from the severed head, torso and limbs and on scientific analysis he found that the same gene found in the blood of PW-1 and Baby Ponnusamy were found in the recovered parts of the body and that therefore they should belong to the only missing son of PW-1.

6.The prosecution's version of facts leading to the present case are that on 06.11.1996 at about 2.00 p.m. the accused-John David [first year senior medical student of Muthiah Medical College, Annamalai Nagar] took away Navarasu-deceased [first year junior medical student of Muthiah Medical College, Annamalai Nagar] and subjected him to severe ragging in Room No. 319 of KRM Hostel of the college and when the latter did not subjugate himself to the accused, accused caused head injury to the deceased and when Navarasu-deceased was lying on the ground unconscious, the accused severed his head and limbs with the help of stainless steel knives and removed his gold ring, watch and gold chain and caused his death. After doing such gruesome act and with the intention of hiding the evidence and also to show his alibi he put the head and the gold articles of Navarasu-deceased in a zip bag and threw it into canal water near the hostel and burnt the bloodstained clothes of the deceased in the open terrace of the hostel building and took the torso in a suitcase along with the limbs in a train to Madras and threw the limbs in a river when the train crossed Cuddalore and put the torso in a bus at Tambaram.

7. On completion of investigation, the police submitted a charge sheet against the respondent. On the basis of the aforesaid charge sheet, charges were framed against the accused-

respondent. The prosecution in order to establish the guilt of the accused examined several witnesses and exhibited a number of documents including scientific reports. Thereafter, the accused was examined under Section 313 Cr.P.C. for the purpose of enabling him to explain the circumstances existing against him. After hearing arguments advanced by the parties, the Principal Sessions Judge, Cuddalore by its judgment dated 11.03.1998 convicted the accused. Principal Sessions Judge, Cuddalore found that there are enough circumstantial evidence and motive on the part of the accused for committing such a crime and held the accused/respondent guilty under Sections 302, 201, 364 and 342 IPC and convicted and sentenced him to undergo imprisonment for life under sections 302 and 364 IPC, rigorous imprisonment for one year under Section 342 IPC, and rigorous imprisonment for seven years and to pay a fine of rupees one lakh and in default to undergo rigorous imprisonment for twenty one months under Section 201 IPC. It was also ordered that the sentences would run consecutively.

8. Aggrieved by the aforesaid judgment and order of conviction passed by the trial Court, the respondent herein preferred an appeal before the High Court. The High Court entertained the said appeal and heard the counsel appearing for the parties.

On conclusion of the arguments, the High Court held that the prosecution has failed to prove the guilt of the accused and accordingly the High Court acquitted the respondent of all the charges vide its judgment and order dated 05.10.2001 by reversing and setting aside the order of conviction passed against the respondent under Sections 302, 201, 364 and 342 IPC.

9. We may now at this stage refer to the arguments of the counsel of the parties in order to understand the scope and ambit of the appeal and also to appreciate the contentions so as to enable us to arrive at a well-considered findings and conclusions.

10. Mr. S. Thananjayan, learned counsel appearing on behalf of the State emphatically argued before us that the decision of the High Court of acquitting the accused person is totally erroneous and suffers from serious infirmities. He also submitted that the prosecution has proved the case to the hilt and that a complete and well-connected chain of circumstantial evidences have been established to prove the guilt of the accused. He also submitted that the prosecution has established the case against the accused beyond reasonable doubt. It was also submitted that the motive of the accused to cause bodily injury to the deceased has also been proved and that the evidence on record clearly establish that on 06.11.1996 the deceased was in the company of the accused and that thereafter, deceased could not be found and that the confessional statement of the accused leading to the discovery of head of the deceased in the canal is a clinching circumstance to connect the accused with the offence. He also contended and relied upon the fact that the accused absconded from the hostel for several days and thereafter surrendered before the Court which would serve as an additional link in the chain of circumstances to prove the charges levelled against him. He also submitted that the High Court was not justified in setting aside the order of conviction, for what the High Court had found proved was only a plausible or possible view and version, which did not find

favour with the trial Court. He also submitted that the High Court was not justified in disbelieving the recording of confession merely because of the omission to mention the same in the case diary. It was also submitted that the High Court was not justified in disbelieving the recovery merely because there was contradiction with regard to timing of recovery. He further submitted that the High Court erroneously disbelieved the case of the prosecution that the torso could be carried in MO-13 - Suit Case which is 21 inches as according to Exhibit P52 mahazar - the length of MO-13 is 21 inches and diameter is 24 inches and therefore, the torso could not have been parceled in the suit case MO-13. He also took us through the evidence on record in support of his contention that the High Court committed an error in acquitting the respondent solely on the ground that it is hazardous to convict the accused on the basis of the evidence placed by the prosecution. He submitted that in the present case all the witnesses produced are of respectable status and are independent witnesses and they do not have any axe to grind against the accused and, therefore, the High Court committed an error in disbelieving the evidence on record.

11. On the other hand, Mr. Sushil Kumar, learned senior counsel appearing on behalf of the respondent-accused very painstakingly drew our attention to various aspects of the case, which according to him demolish the very substratum of the prosecution case. He also heavily relied upon the fact, by making submission, that there are no eye-witnesses and no direct evidence regarding commission of the crime by the respondent. He submitted that there are no materials to show that the respondent took the deceased to room No. 319 [room of the accused] and killed him there. He further submitted that as no blood was recovered from the room No. 319 and that the two roommates of the respondent, viz., Raja Chidambaram [PW-37] & Shagir Thabris [PW-38] have not stated that they smelled any blood or saw any blood stains in the room, it definitely belies prosecution case that murder was committed in the said room of the hostel. Further submission was that PWs 37 & 38 admitted that the three knives [i.e., MOSs 9 to 11] were used for cutting fruits and that PW 37 further admitted that during the time of interrogation police neither showed the articles seized from the room of accused nor asked him to identify the said articles. The counsel for the respondent further submitted that there is no evidence to prove that the accused proceeded to Madras on 06.11.1996 at 9.00 p.m. from Chidambaram railway station, albeit he submitted that accused took train at Chidambaram on 06.11.1996 at 9.00 p.m. bound for Tiruchirapalli to go to his native place, Karur and returned from Karur on 8th morning. Counsel stated that accused took his briefcase [MO-13] along with him and that MO-14 belongs to Raja Chidambaram [PW-37] and after meeting his parents on 7.11.96, the accused returned to Chidambaram hostel on the morning of 8.11.96 and he was in the hostel from 9-11.11.96.

On the night of 10.11.96 his mother and his cousin brother had arrived at Chidambaram and stayed in Saradha Ram Hotel and they left on 11.11.96 Noon. Counsel for the respondent further submitted that the non-examination of the Vice-

Chancellor and the Dean of the university though they have been cited in the charge sheet as witnesses is fatal to the prosecution case. Next submission was that the chain of events to prove the guilt of the accused has many loopholes in it.

APPEAL AGAINST ACQUITTAL

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 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX In Chandrappa v. State of Karnataka this
 Court held:

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal.

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(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

3. Due or proper weight and consideration must be given to the trial court's decision.

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

This Court would be justified in interfering with the judgment of acquittal of the High Court only when there are very substantial and compelling reasons to discard the High Court decision. When we apply the test laid down by this Court repeatedly in a large number of cases, the irresistible conclusion is that the High Court in the impugned judgment has not correctly followed the legal position."

14. In another decision of this Court in the case of Sannaia Subba Rao & Ors. Vs. State of A.P. reported at 2008 (17) SCC 225, one of us, has referred to and quoted with approval the general principles while dealing with an appeal against acquittal, wherein, it was clearly mentioned that; the appellate court has full power to review, relook and re-appreciate the entire evidence based on which the order of acquittal is founded; further it was also accepted that the Code of Criminal Procedure puts no limitation or restriction on the appellate court to reach its own conclusion based on the evidence before it.

15. In the case of Sidhartha Vashisht alias Manu Sharma v.

State (NCT of Delhi) reported at (2010) 6 SCC 1 this court held as follows: -

"27. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded.

(ii) The appellate court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

(iii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons"

for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed."

16. Therefore, one of the settled position of law as to how the Court should deal with an appeal against acquittal is that, while dealing with such an appeal, the appellate Court has no restriction to review and relook the entire evidence on which the order of acquittal is founded. On such review, the appellate Court would consider the manner in which the evidence was dealt with by the lower Court. At the same time, if the lower Court's decision is based on erroneous views and against the settled position of law, then such an order of acquittal should be set aside.

17. Another settled position is that, if the trial Court has ignored material and relevant facts or misread such evidence or has ignored scientific documents, then in such a scenario the appellate court is competent to reverse the decision of the trial court.

18. Therefore keeping in mind the aforesaid broad principles of the settled position of law, we would proceed to analyse the evidence that is adduced and come to the conclusion whether the decision of the High Court should be upheld or reversed.

CASE ON CIRCUMSTANTIAL EVIDENCE

19. The principle for basing a conviction on the edifice of circumstantial evidence has also been indicated in a number of decisions of this Court and the law is well-settled that 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. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof. It has been indicated by this Court that there is a long mental distance between 'may be true' and 'must be

true' and the same divides conjectures from sure conclusions.

20. This Court in the case of *State of U.P. v. Ram Balak & Anr.*, reported at (2008) 15 SCC 551 had dealt with the whole law relating to circumstantial evidence in the following terms: -

"11. 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 such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.* wherein it has been observed thus: (SCC pp. 206-07, para 21) '21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.'

11. In *Padala Veera Reddy v. State of A.P.* it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: (SCC pp. 710-11, para 10) '(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.'

'10. ... 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.'

16. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra*. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are: (SCC p. 185, para 153) (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and (5) 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 the act must have been done by the accused."

These aspects were highlighted in *State of Rajasthan v. Raja Ram*, at SCC pp. 187-90, paras 9-16 and *State of Haryana v. Jagbir Singh*."

21. In the light of the above principle we proceed to ascertain whether the prosecution has been able to establish a chain of circumstances so as not to leave any reasonable ground for the conclusion that the allegations brought against the respondent are sufficiently proved and established.

MOTIVE

22. In the present case, in the chain of events, the first point which arises for our consideration is the MOTIVE behind the alleged crime done by the accused-John David. The prosecution has alleged that accused was in the habit of ragging the junior students and accustomed in getting his home work done by the junior students and that is why when the deceased did not subjugate himself to the accused, the accused gathered ill-will against the deceased and therefore, that was the motive for which the accused killed him.

23. For the purpose of proving the aforesaid motive of the accused the prosecution has placed reliance upon the evidence of Dr. R. Sampath [PW-3], Karthikeyan [PW-4], Praveen Kumar [PW-5] and Subhash [PW-6], V. Balaji [PW-19] and Ramaswamy [PW-20]. Dr. R. Sampath [PW-3], who is the Head of the Department of Radiology, Annamalai University as also part-

time Warden of Malligai Hostel of the University, who in his deposition has stated that on 19.11.1996 at about 8.30 p.m. he had witnessed the junior students standing in front of the Hostel in a row in front of the seniors, including the accused-

John David. Thereafter PW-3 made enquiries on the incident and submitted a report about the incident of ragging to the higher officials which is marked as Exhibit P-3. Karthikeyan [PW-4], 1st year junior student of the college, stated that on 06.11.1996 accused-John David along with one Kumaran came to Hostel and forced him to purchase the tickets of Engineering Cultural Programme, which they purchased with hesitation and this fact was also witnessed by the Warden and Deputy Warden. Along with PW-4, Praveen Kumar [PW-5] and Subhash [PW-6], both 1st year students of the college, stated in their evidence that they have written record work for the accused-

John David under compulsion and with the fear of being ragged. V. Balaji [PW-19], 1st year student of college, stated in his evidence that the accused-John David along with Kumaran forced them to purchase the tickets for the Cultural Programme and also made them to stand and that Warden, Dean and Deputy Warden got the students released from such ragging.

Ramaswamy [PW-20], 1st year student of the college, stated in his evidence that accused-John David used to come to hostel for ragging and to get the record work completed after ragging.

PW-19 further stated that on 06.11.1996, after finishing his viva-voce test at about 11.30 a.m. when he returned, the accused came to his room between 11.30 a.m. to 12 Noon and asked him about the deceased-Navarasu. PW-20 also stated that when he was returning after finishing his viva-voce test, the accused on 06.11.1996 at about 12 Noon asked him about the completion of the test of Navarasu. From the evidence of the above witnesses and other documents on records it becomes quite evident that the record books of the accused were written by other juniors and that accused was in the habit of ragging junior students. The evidence of PWs 19 & 20 also go to prove that the accused was looking for Navarasu frantically in the morning, which was definitely not for the benefit of the deceased looking at the background behaviour of the accused towards deceased, for there is enough evidence on record to support the case of the prosecution that the accused was having malice and ill-will against with the deceased as he had refused to succumb to the ragging demands of the accused.

LAST SEEN ALIVE

24. In the chain of events, the second point which arises for our consideration is the LAST SEEN evidence of deceased with the accused. For proving the said fact that the deceased was last seen alive in the company of the deceased, the prosecution has placed reliance upon the evidence of V. Balaji [PW-19] and Ramaswamy [PW-20], G.M. Nandhakumar [PW-21], R. Mohamed Shakir [PW-22], R.

Saravanan [PW-23] and T. Arun Kumar [PW-25]. PWs 21 and 22, 1st year students of the college, stated in their evidence that when they were returning from the college at about 12.45 p.m. on 06.11.1996 they saw the deceased and accused together and accused stopped Navarasu and asked them to leave from there and thereafter they had not seen Navarasu alive. PW-23, Laboratory Attendant of the college, stated in his evidence that he saw both accused and deceased in conversation with each other on 06.11.1996 at about 12.45 or 1.00 p.m. in front of Dean's office. PW-25, 2nd year college student, stated that he also saw both accused and deceased together at about 2.00 p.m. on 06.11.1996. From the evidence of Dr. Sethupathy [PW-7], Mrs. Alphonsa [PW-8], Prof. Gunasekaran [PW-10] and V. Balaji [PW-19] it also comes out that till the afternoon of 06.11.1996 deceased attended the lectures but after meeting with the accused he did not appear in the lecture/test on the same day and was also absent thereafter from lectures/tests. Ramaswamy [PW-20] also categorically stated that after the viva-voce test held on 06.11.1996, he did not see the deceased alive. From the evidence of all the abovesaid witnesses it is also clear that the deceased was last seen alive in the company of the accused on 06.11.1996 between 12.45 to 2.00 p.m. and thereafter no one had seen the deceased alive and this fact also supports the case of the prosecution. Moreover accused admitted in his statement filed during question U/s 313, Cr.P.C. that he was sitting in the corridor of Dean's office in the afternoon of 06.11.1996, which further corroborates the case of prosecution.

SUSPICIOUS CONDUCT OF THE ACCUSED

25. The conduct of the accused is the next chain of circumstance which is heavily relied upon by the prosecution for proving the guilt of the accused and for this it placed reliance on the evidence of Subba @ Vankatesan [PW-28], Vijayarangam [PW-29], Murali [PW-35], Senthilkumar [PW-40], Joe Bulgani [PW-41] and Rajmohan [PW-42]. PW-28, auto driver, stated in his evidence that on 06.11.1996 at about 8.00 p.m. accused took his auto to the hostel from where the accused went to Chidambaram railway station along with two suitcases. PW-29, Watchman of KRM Hostel, stated in his evidence that on 06.11.1996 at 8.15 p.m. accused came to hostel in an auto and brought two bags inside the hostel and left in auto immediately thereafter and that the accused returned with the two suitcases at 4.00 a.m. on 8.11.1996. PW-

40, student of the college stated that on 08.11.1996 at 4.30 a.m. he saw the accused sleeping in the veranda of Room No. 319 with two suitcases nearby because the accused did not have the room keys, as the accused's roommate took away the keys and, when PW-40 offered the accused to come and stay in his room, at about 5.30 a.m. the accused came to his room and kept a suitcase, i.e., MO-14 and went to sleep in the room of PW-41 along with MO-13. When PWs 40 & 41 came from mess at about 8.30 a.m. PW-41 complained about foul smell coming from his room [Room No. 325]. Thereafter, accused took the MO-13 from the room at about 12.30 p.m. This statement of PW-40 was also supported by the statement of PW-41. PW-42, student of the college, stated that on 8.11.1996 at 12.30 p.m. accused was sleeping in Room No. 325 and that on 9.11.1996 accused along with one other student went to 'B' Mess for lunch but accused did not take the lunch on the ground that his stomach is not alright and on return he saw accused keeping his hand on the wall with sad look on his face. He further stated that when he entered in the room of the accused [Room No. 319] he smelt foul smell and on asking about the same from the accused, the accused replied that it is of

the Biriyani which was given to him by his mother. Later at 4.30 p.m. the accused asked PW-42 to drop him at the Chidambaram Railway Station as he wanted to go to his native place and thereafter he dropped the accused along with a briefcase at the Railway Station on the bike of one Rangarajan.

PW-42 also purchased a train ticket for Tanjavur for the accused. PW-42 also stated that on 10.11.1996 he saw accused standing before Room No. 319 and on asking the accused told that he went upto Trichy and returned back. PW-35, Receptionist of Hotel Saradharam, Chidambaram stated that on 10.11.1996 at about 8.10 p.m. accused stayed in the hotel along with one Dr. Esthar and they vacated the room at 3.15 a.m. on 12.11.1996. The accused on 14.11.1996 surrendered in the Court of Judicial Magistrate, Mannarkudi and was remanded to judicial custody till 18.11.1996. On 18.11.1996 the Court ordered for five days police custody of the accused on the condition that the accused should be produced before a Doctor in the Government Hospital, Chidambaram at 10.00 a.m. daily for medical check up. The above said unusual and eccentric conduct of the accused which is unequivocally told by the witnesses makes the conduct of the accused highly suspicious and leads to corroborate the case of the prosecution.

CONFESSIONAL STATEMENT OF ACCUSED AND CONSEQUENTIAL RECOVERIES.

26. In the present case, as stated supra, PW-1, father of the deceased, filed a report with the police for missing of his son on 10.11.1996 which was registered as Crime No. 509 of 1996 [Exhibit-P1]. In the present case the accused after surrendering before the Court of Judicial Magistrate, Mannarkudi on 14.11.1996 also gave his confessional statement [Exhibit-50] on 19.11.1996 in the presence of Rajaraman [PW-58], Village Administrative Officer for the non-municipal area of Chidambaram, wherein in very clear terms he admitted his crime as is presented by the prosecution. After the surrender of the accused on 14.11.1996 he was lodged in the Central Prison at Tiruchi. Prosecuting agency in Crime No. 509/96 filed a petition before the Judicial Magistrate, Chidambaram for the police custody of the accused U/s 167 of Cr. P.C., which was allowed by the Court for five days from 18.11.1996 on the condition that the accused should be produced before a Doctor in the Government Hospital, Chidambaram at 10.00 a.m. daily for medical check up and at 1.30 a.m. On 19.11.1996 the accused made a voluntary confession as stated hereinabove.

Also it has been admitted by the Trial Court as also by the High Court that at no stage of trial there is any allegation of torture of the accused in the hands of the police, which clearly proves that the statement made by the accused on 19.11.1996 was given voluntarily and is an admissible piece of evidence. The High Court merely on an assumed basis held that the confessional statement could not have been voluntarily given by the accused without referring to any particular evidence in support of the said conclusion. The confession was given by the accused in presence of Rajaraman [PW-58], Village Administrative Officer; Mr. Subramanian [assistant of PW-58], who are totally independent persons.

27. In the case of *Amitsingh Bhikamsingh Thakur v. State of Maharashtra* reported in (2007) 2 SCC 310 this Court had said that, when on the basis of information given by the accused there is a recovery of an object of crime which provides a link in the chain of circumstances, then such information leading to the discovery of object is admissible.

28. We may at this stage, would like to state the proposition of law that only such information which is found proximate to the cause of discovery of material objects, alone is taken as admissible in law and in the present case there are lot of materials which were recovered at the instance of such confessional statement made by the accused only. We may detail out such material findings in this case.

29. At the instance and in pursuance of the said confessional statement given by the accused PW-78, Police Inspector, Annamalai Nagar; Rajaraman [PW-58], Village Administrative Officer; Mr. Subramanian [assistant of PW-58] along with other witnesses went to the south canal of the KRM Hostel at about 7.30 a.m. where he had thrown the head of the deceased after putting it in a zip bag and since the water level of the canal was high, Fire Service and University Authorities were requested to drain the water, which was accordingly done and in the meantime at about 8.45 a.m. at the instance of accused only MO-3, a rexine bag, was recovered which contained two notebooks belonging to the deceased [MOs 4 & 5]. Thereafter, after producing the accused before the Doctors of Govt.

Hospital at 10.00 a.m. as per the directions of the court, the accused, took PW-78 along with other witnesses to Room No. 319 and from there material objects from 9 to 15 and 29 were recovered which included three knives, one blue colour small brief case, among others and from Room No. 323 and 325 material objects from 30 to 33 were recovered which included blood stained cement mortar. At about 4.00 p.m. when the search party returned to the boat canal, the zip bag [MO-22] containing a severed human head was recovered at 4.30 p.m. In the instant case the fact that the severed head of the deceased-Navarasu was recovered from the specific place which was indicated and identified by the accused. The recovery of other material objects at the indication/instance of the accused creates/generates enough incriminating evidence against him and makes such part of the confessional statement clearly admissible in evidence. The fact that the skull found in the water canal of the university belonged to Navarasu-deceased is proved from the evidence of Dr. Ravindran [PW-66], Dr. Venkataraman, [PW-52] and G.V. Rao [PW-77]. PW-66 in his evidence has stated that the deceased appear to have died because of decapitation of injuries and that the injury is ante-

mortem. The Doctor also opined that a sharp cutting weapon would have been used for causing injuries. He further stated in his evidence that severing of head and removal of the muscles and nerves of limbs could have been done by MOs 9 to

11. PW-66 also opined that both the torso and head belongs to one and the same person. Also from the evidence of Dr. Venkataraman, [PW-52] Parasu Dental Clinic, Adyar, Madras it is found that he had given silver filling on the right upper first molar of the deceased and that he had removed the left upper milk tooth and removed the root thereof and the said fact was also clearly and rightly found in the post mortem conducted by PW-66 on the head recovered from the boat-canal. The said fact was also proved from the DNA test conducted by PW-77. PW-77 had compared the tissues taken from the severed head, torso and limbs and on scientific analysis he has found that the same gene found in the blood of PW-1 and Baby Ponnusamy were found in the recovered parts of the body and that therefore they should belong to the only missing son of PW-1.

30. In the present case Trial Court relied upon the super-

imposition process/test made by Dr. Jayaprakash [PW-65], Assistant Director, Forensic Science Department, Madras, who stated in his evidence that the skull recovered was of Navarasu.

Therefore, from the evidence of PWs 65 & 66 it becomes amply clear that the skull recovered from the boat canal is of Navarasu only.

31. Now, so far as the recovery of limbs and torso of the deceased-Navarasu is concerned, we would like to detail the recovery of the same, their identification and also their relation insofar as the confessional statement made by accused is concerned.

32. On 7.11.1996 at about 6.00 p.m. Prakash [PW-53] the conductor of Bus [bearing no. T.B.01-2366] having route No. 21G [from Tambaram suburban of Chennai City to Paris Corner] found a male torso under the last seat of the bus packed in white blood stained polythene bag with red letters [marked as MO-16] and thereafter Crime No. 1544 of 1996 case was registered and investigation was started by G. Boopathy [PW-55], Inspector of Police, E.5, Pattinapakkam PS, Chennai.

Dr. Ravindran [PW-66] conducted autopsy/post-mortem at 10.00 a.m. on 8.11.1996 and he found that the deceased have died of decapitation of injuries, he opined that the injuries found on the torso and skull were anti-mortem and the deceased would appear to have died of decapitation and he further stated that the respective surface of the fifth cervical vertebra of the head are reciprocally fitting into the corresponding surface of the sixth cervical vertebra of the torso and this articulation was exact in nature and hence he opined that the head and torso belonged to one and the same person.

33. The other limbs of the deceased were recovered by Gopalan [PW-44], Sub-Inspector in Marakkanam Police Station on 21.11.1996 in a pale-coloured with yellow, red and green checks in a lungi-like bed-sheet and along with it was torn polythene bag and a pale cloth thread.

34. In the present case there is no direct evidence to prove that the accused had himself taken the torso and limbs of the deceased to Madras and threw the limbs somewhere (while transit to Madras) and also that accused carried the parcel of torso to Madras and dropped it in the bus No. 21G at Tambaram but, there is only circumstantial evidence.

35. One of the clinching evidence against the accused is the two suitcases [MOs 13 & 14]. Raja Chidambaram [PW-37], the room mate of the accused, stated in his evidence that the two suitcases in which the blood of the deceased was found belong to the accused. He also stated that MO-22, which is a bag in which the head of the deceased was recovered, also belong to the accused. Shagir Thabris [PW-38] also corroborated the said fact in his evidence. Blood found in the suitcases matched with the blood of the deceased which is blood group 'A'. It is also proved from the evidence of the students adduced in the case that foul smell was emanating from the said two suitcases and that when accused was asked about the said smell, he only replied that it is because of Biryani,

which his mother had given him. Subba @ Vankatesan [PW-28], auto driver, has affirmatively stated that the accused had taken out those two suitcases with him in his auto rickshaw on 06.11.1996 when he dropped him at Chidambaram Railway Station. The hostel chowkidar examined as PW-29 [Vijayarangam] corroborated the said fact. The students of the hostel, Senthilkumar [PW-40], Joe Bulgani [PW-41], not only spoke about the foul smell emanating from the room where those suitcases were kept but also of the fact that the accused had brought those two suitcases with him when he came back to the hostel on 08.11.1996 morning. These are indeed circumstantial evidence but all leading to one conclusion that the accused is guilty of the offence of killing the deceased. There is however some doubt with regard to the place of occurrence but there is also strong and cogent evidence to indicate that the room mates of the accused, i.e., PWs 37 and 38, were watching a cricket match during the entire afternoon, evening and till late night on 06.11.1996 in the TV room, and the accused had the room (Room No. 319) all to himself in the afternoon and evening upto 11.00 p.m. The accused left the said room with two suitcases at 8.30 p.m. which is proved by way of evidence of the watchman and auto driver. The room mate of the accused, viz., PW-38, came back to Room No. 319 at about 11.00 p.m. and slept and on the next day went home.

36. There are enough circumstantial evidence, as discussed above, to hold that it is none else but the accused who could have caused the concealment of torso and limbs because it was the accused who had severed the head of deceased-Navarasu as found earlier and, therefore, he must have been in possession to the torso and limbs, which were also subsequently recovered and were also proved to be that of deceased-Navarasu.

37. Therefore, if we look at the case, we find that the prosecution has succeeded in proving its case on circumstantial evidence. In the present case all the witnesses are independent and respectable eye-witnesses and they have not been shown to have any axe to grind against the accused.

And from the evidence of the several witnesses, as mentioned above, it is clear that the accused nurtured ill feeling against the deceased as the deceased refused to write the record note for accused; that the deceased was last seen with the accused in the afternoon of 06.11.1996 and he was searching for him very eagerly; that the conduct of the deceased was very weird and strange and the bags/suitcases kept by him also produced stinking smell; the recovery of skull from canal water, material objects, like, note books of deceased, gold chain, blood stained bags, knives etc.,; and also the evidence of PW-66, PW-65 and PW-77 who have categorically stated that the skull, torso and limbs recovered were of the deceased only.

38. It is well-settled proposition of law that the recovery of crime objects on the basis of information given by the accused provides a link in the chain of circumstances. Also failure to explain one of the circumstances would not be fatal for the prosecution case and cumulative effect of all the circumstances is to be seen in such cases. At this juncture we feel it is apposite to mention that in the case of State of Karnataka v.

K. Yarappa Reddy reported in (1999) 8 SCC 715 this Court has held that; the court must have predominance and pre-

eminence in criminal trials over the action taken by the investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it.

39.Hence, minor loopholes and irregularities in the investigation process cannot form the crux of the case on which the respondent can rely upon to prove his innocence when there are strong circumstantial evidences deduced from the said investigation which logically and rationally point towards the guilt of the accused.

40. Therefore in our considered opinion prosecution has established its case on the basis of strong and cogent circumstantial evidence and that on the basis of the circumstances proved, there cannot be any other possible or plausible view favouring the accused. The view taken by the High Court is totally erroneous and outcome of misreading and misinterpreting the evidence on record.

41.In view of the aforesaid discussion, facts and circumstances of the case, we are of the considered view that the High Court erred in reversing the order of conviction recorded by the trial Court as the prosecution has established its case. Accordingly, we set aside the judgment and order of the High Court and restore the judgment and decision of the trial Court but only with one rider that the sentence awarded shall run concurrently and not consecutively as ordered by the trial court. While doing so we rely upon sub-section (2) of section 31 of the Code of Criminal Procedure, 1973.

42.In the result, the appeal is allowed, bail bond of the respondent is cancelled and the respondent is directed to surrender before the jail authorities immediately, failing which the concerned authorities are directed to proceed in accordance with law.

.....J [Dalveer Bhandari]J [Dr. Mukundakam
Sharma] New Delhi, April 20, 2011.