

Ranjithkumar vs State Rep. By Inspector Of Police on 8 March, 2012

Bench: N.Paul Vasanthakumar, P.Devadass

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08/03/2012

CORAM

THE HONOURABLE Mr.JUSTICE N.PAUL VASANTHAKUMAR

and

THE HONOURABLE Mr. JUSTICE P. DEVADASS

Criminal Appeal (MD) No.52 of 2011

1.Ranjithkumar

2. Radha @ Anuradha ... Appellants

Vs

State Rep. by Inspector of Police

Mayanur Police Station

Karur District. ... Respondent

Prayer

Appeal filed under Section 374 (2) of Criminal Procedure Code against the judgment dated 21.12.2010 of learned Sessions Judge, Karur in S.C.No.58 of 2010 convicting and sentencing the appellants.

For Appellants . . . Mr.P.K.Natarajan

¹⁴For Respondent ... Mr.K.S.Duraipandian

Additional Public Prosecutor

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: JUDGMENT

P.DEVADASS,J.

1. Appellants 1 and 2, who are A.1 and A.2, in Sessions Case No.58 of 2010 were found guilty under Section 302 read with 34 I.P.C., by the learned Sessions Judge, Karur, who has convicted them to life and fined Rs.500/-, in default, to undergo one month rigorous imprisonment.

2. For convenience sake, throughout the judgment, appellants 1 and 2 shall be called as A.1 and A.2.

3. The prosecution case may briefly be stated as under:

(i) P.W.1 Perumayee's son is Mayavan. He married his uncle Rengan's daughter Ratha @ Anuratha (A.2). They were residing in door No.8/208, near Bagavathiamman kovil, Kattur, Thirukampuliyur, in Krishnarayapuram Taluk, in Karur District. In one part of his house, he is running his tea shop. They have three daughters and one son. P.W.1 is also residing with them.

(ii) A.1 Ranjithkumar belongs to Thanneerpalam, near Mayanur. He used to visit Mayavan's tea-shop. Illegal intimacy developed between A.1 and A.2. So, quarrel arose between the spouses. Mayavan reported the matter to the panchayat.

Senthilkumar, Panchayat President, P.Ws.2 and 3 Pari and Sadha @ Sadasivam mediated the matter. At Ayyarmalai, they informed A2's relatives also. All warned her to be faithful to her husband. However, there was no change in her conduct. Again, after one month, Mayavan informed P.W.3 about her illegal affair with A.1.

(iii) On 12.04.2009, night, A.2 cooked chicken curry. P.W.1 and the children ate. With regard to A.2's conduct, wordy altercation arose between A.2 and her husband. A.2 shouted at him. P.W.1 and the children went to sleep in the room in the shop. A.2 served chicken curry meals to her husband. Both slept in the house. After about an hour, Mayavan vomitted.

(iv) Around 1 a.m., P.W.6 Krishnan, residing opposite to Mayavan's house, came out to urinate. Then street lights were also burning. At that time, from the lane in Mayavan's house, A.1 came pulling Mayavan's T.V.S. Suzuki bike, keeping a gunny bag, near its petrol tank and A.2 pushed the bike from behind and they took the bike towards Mettu Thirukampuliyur. Since A.1 is in coconut business, P.W.6 thought that he was carrying coconut in the gunny bag. P.W.5 Thangavel, a mechanic, residing in Kattur, at about 1.30 a.m., seen them pushing the bike with a gunny bag.

(v) Around 2 a.m., near P.W.2 Pari's house, on the road, near a speed breaker, the bike stopped, A.1 left it and ran away. P.Ws.3 and 4 Sada @ Sadasivam and Anand went near it. It is a blue colour bike bearing the registration No.TN-45-B-9151 (M.O.6). From the gunny bag, blood was dripping and a toe was protruding. P.Ws.3 and 4 informed P.W.2. He also seen the gunny bag.

(vi) On intimation, P.W.7 Ellangovan, V.A.O., Thirukampuliyur and his Assistant Ramanikumar came. They untied the coir rope (M.O.2) of the gunny bag (M.O.3), inside the gunny bag, dead body of Mayavan with banian (M.O.4) and lungi (M.O.5) was found. A red colour nylon rope (M.O.1) was also tied around the neck.

(vii) Around 3 a.m., P.W.1 was brought. She identified her son's dead body. She gave Ex.P.1 statement to P.W.7.

(viii) At about 5.30 a.m., at the Mayanur Police Station, P.W.7 presented Ex.P.1 statement with his endorsement (Ex.P.2) to P.W.15 Chinnathambi, Inspector. He registered a case in crime No.146 of 2009 under Section 302 and 201 I.P.C. He sent the Express F.I.R. (Ex.P.20) to Judicial Magistrate No.II, Kulithalai through P.W.14 Krishnan, Head Constable.

(ix) P.W.15 took up his investigation. At about 6.45 a.m., in the presence of P.W.7 and Ramanikumar, near the speed breaker, he prepared Ex.P.3 Observation Mahazaar. Drew Ex.P.21 rough sketch. Recovered M.Os.1 to 3 and 6 to 8 under Ex.P.4 Mahazar. In the presence of panchayathars, held inquest over the dead body (Ex.P.22 Inquest Report).

(x) At the said place, P.W.11 Manickam, Finger Print Expert, lifted a chance finger print from M.O.6 bike. P.W.12 Mani, Forensic Officer, collected blood stains from the tar road (M.O.7).

(xi) P.W.15 sent the dead body through P.W.13 Neelamegam, Head Constable with his requisition to the Government Hospital to conduct postmortem. P.W.15 examined P.Ws.1 to 7 and other material witnesses and recorded their statements.

(xii) On 13.04.2009, at about 2.45 p.m., at the Govt. Head Quarters Hospital, Karur, P.W.10 Dr.Natarajan conducted postmortem on the dead body of Mayavan and found the following:

1. Cut injury over right parieto occipital region 6cm x 3 cm x bone depth.
2. Abrasion over right side of forehead 3cm x 2cm.
3. Abrasion over left side of forehead 0.5cm x 1cm.
4. Abrasion over centre of nose 1cm x 4cm.
5. Abrasion over right shoulder 4cm x 3cm.
6. Abrasion over right side of abdomen 5cm x 2cm.
7. Abrasion over right knee 3cm x 2cm.
8. A rope mark present encircling the whole neck below the cricoid cartilage 0.5cm in breadth.
9. A rope mark present lateral to both angles of mouth extending upto mastoid process right side and nape of neck left side about 0.5cm in breadth.

Skull : fracture present in left roof of orbit, left frontal and parietal occipital region. Hematoma present in both sides of scalp over parietal region.

(xiii) P.W.10 opined that the deceased would appear to have died about 12- 24 hours prior to autopsy and he would have died of cumulative effect of head injury, compression neck and phosphide and ethyl alcohol poisoning. (Ex.P.17 postmortem certificate).

(xiv) On 14.04.2009, at about 3. a.m., in the presence of P.W.7 and Ramanikumar, near Periyapalam Bus-stop, in Kulithalai, P.W.15 arrested A2 and recorded her confessional statement Ex.P.24. At about 6.30 a.m., in Jodarpalayam, in Namakkal District, P.W.15 arrested A.1 and recorded his confessional statement Ex.P.25. A.1 and A.2 took them to Mayavan's house in Kattur. A.1 shown him a place. P.W.15 prepared Ex.P.8 observation mahazar and also drew Ex.P.23 rough sketch. From this place, blood-stained earth (M.O.9) and plain-earth (M.O.10) were recovered under Ex.P.7 Mahazar. From the backyard, the accused produced Crowbar (M.O.11), Nokia Cell phone (M.O.12) and Nylon Sack (M.O.13). P.W.15 recovered them under Ex.P.9 mahazar. A.1 took them to a bush behind his house in Thaneerpalam and produced blood-stained lungi (M.O.14), blood-stained half-sleeve shirt (M.O.15) and Vodafone cell phone with sim card (M.O.16). P.W.15 seized them under Ex.P.10 mahazar.

(xv) In the course of investigation, it came to light that prior to the death of Mayavan, A.2 had sex with A.1 and still she was wearing the same dress. P.W.15 seized her Saree (M.O.20), jacket (M.O.21) and inskirt (M.O.22). P.W.15 sent A.1 and A.2 to court for judicial custody. He produced the case - properties to the court.

(xvi) P.W.15 gave requisition to the Court to send Viscera (Ex.P.32) and Hyoid bone (Ex.P.33) of the deceased for examination. He also gave Ex.P.34 requisition to conduct potentiality test for A.1 and medical test for A.2 (Ex.P.35). On examination, it is found that A.1 was capable of performing sexual act (Ex.P.36). The vaginal smear of A.2 did not have semen.

(xvii) P.W.15 gave Ex.P.39 requisition to send the blood taken from the dead body for analysis. After analysis, the blood-stains in the red nylon rope (M.O.1), gunny bag (M.O.3), tar-earth (M.O.7), banian (M.O.4), lungi (M.O.5), lungi (M.O.14), half sleeve shirt (M.O.15), saree (M.O.20) and jacket (M.O.21) are human blood and it is 'B' group. (Exs.P.11 to 13). The stomach of the deceased contained phosphide and ethyl alcohol and the intestine, liver and kidney contained ethyl alcohol (Ex.P.14 - Toxicology Report).

(xviii) On comparison, the chance finger print (S1) and the sample finger print of the accused (M1) tallied. (Ex.P.18 certificate of latent print examination.) (xix) In view of the superannuation of P.W.15, P.W.16 Sivaraman, Inspector continued the investigation. He examined the Forensic Scientists, Postmortem Doctor and the court Head Clerk. Completing the investigation, he filed the Final Report for offences under Sections 120-B, 302, 302 r/w 34, 201 r/w 34 I.P.C.

4. Charges under Sections 120-B, 302 r/w 34 and 201 I.P.C. were framed as against A.1 and A.2.

5. To substantiate the charges, prosecution examined P.Ws.1 to 16, marked Exs.P.1 to P.54 and exhibited M.Os.1 to 22.

6. On the incriminating aspects in the prosecution evidence, the accused have been examined. They denied their complicity in this case.

7. Appreciating the evidence on record as well as the submissions of both sides, the learned Sessions Judge, Karur, placing reliance on certain incriminating circumstances projected through evidence came to the conclusion that the prosecution has established beyond all reasonable doubts that A.1 and A.2 have killed Mayavan and thus, found them guilty under Section 302 r/w. 34 IPC and sentenced them as already stated.

8. Assailing the said conviction and sentences, Mr.P.K.Natarajan, learned counsel for the accused submitted as under:-

(i). P.W.7 VAO stated that P.W.1 gave complaint on 12.4.2009, at about 3 p.m., at the place, where the dead body of her son was found. Thereafter, the FIR was lodged at Mayanur Police Station, around 5.30 a.m. However, P.W.1 had stated that she came to that spot only at about 8 a.m. Further, P.W.7 not presented the complaint in printed format. Thus, the very origin of FIR is doubtful.

(ii). The deceased doubted his wife. Senthil Kumar, Panchayat President, who is stated to have mediated their matter has not been examined. P.W.2 did not know A.1 before. Actually, there was no strained relationship between A.2 and the deceased. There is no strong, sufficient motive for her to kill her husband.

(iii). On that night, A.2 slept along with her children. She did not sleep with her husband. She had also stated this in her written statement.

Thus, she was not lastly seen with her husband. So, the last seen theory has not been established.

(iv). The evidence of P.Ws.5 and 6 that A.1 and A.2 carried the dead body in a gunny bag in a bike is highly unbelievable.

(v). On the morning of 12.04.2009, P.Ws.1 and 6 have seen police taking away A.2 from her house. So, her arrest on 14.4.2009, recording of confession and recovery of material objects from her house are farce.

(vi). P.W.10 the autopsy Doctor is not definite about the cause which had caused his death.

(vii). It is stated that the deceased was poisoned, where from the poison was acquired, who gave him poison and when it was given, are all not established.

(viii). P.W.11, Finger Print Expert did not know from whom the sample finger print has been taken. The sample finger print also has not been taken from the accused on the orders of a Court. It was also not sent through the Court to the Expert. So, Ex.P.18 report of P.W.11 cannot be legally accepted.

- (ix). There is no acceptable proof that before occurrence, A.1 and A.2 had sex in her house.
- (x). Thus, the case against the accused has not been proved beyond all reasonable doubts.
9. On the other hand, Mr.K.S.Duraipandian, learned Additional Public Prosecutor submitted that because of her sexual jealousy, in connivance with A.1, she had poisoned her husband and they have beaten him with M.O.11 crowbar to death, parcelled the dead body in a gunny bag and carried it in Mayavan's moped, A.1 left it at a lonely place, which was witnessed to by witnesses. A.2 and the deceased were seen together. There is medical evidence, Finger print evidence, same blood grouping and there is Section 27 Evidence Act recovery. These incriminating circumstances shows that A.1 and A.2 have killed the deceased.
10. We have anxiously considered the rival submissions, the evidence recorded in the trial Court and the findings of the trial Court.
11. P.W.1 Perumayee's son Mayavan married his own uncle Ranganathan's daughter A.2 Radha @ Anuradha. They were blessed with three daughters and a son. One daughter is with her maternal grandmother. The couples lived at Door No.8/208, near Bagarathamman kovil, Kattur near Thirukambuliyur, in Krishnarayapuram Taluk, in Karur District. P.W.1 also lived with them.
12. Mayavan was running a tea shop in one part of his house. On the night of 12.4.2009, around 2 a.m., Mayavan's dead body was found in a gunny bag. His neck was tied with a red colour nylon rope. There were several deep cut injuries on his head. There was fracture in his parieto region. There were abrasions on many parts of his body. There was fracture of hyoid bone. Dissection of his viscera revealed phosphide and ethylalcohol. P.W.10 Dr.Natarajan, who did the autopsy opined that the deceased would appear to have died of cumulative effect of head injury, compression neck and phosphide and ethyl alcohol poisoning. So, it is a clear case of homicidal death.
13. Who caused his death? According to prosecution, Mayavan's wife A.2 Radha @ Anuradha had illegal relationship with A.1 Ranjith Kumar. Because of this, strained relationship arose between the spouses, since Mayavan was an hindrance to their illegal affair, on the night of 12.4.2009, she served him poisoned chicken curry, thereafter, she and her paramour have beaten him with M.O.11 crowbar and tied his neck with M.O.1 nylon rope and strangulated him to death, parcelled the dead body, in M.O.3 gunny bag, transported the dead body in Mayavan's M.O.6 TVS Suzuki, A.1 had deserted the consignment and the bike at a lonely place.
14. There is no eye-witness in this case. This case is based on circumstantial evidence.
15. 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."

16. In SK.YUSUF Vs. STATE OF WEST BENGAL reported in (2011) 3 SCC (Cri) 620, on the aspect of circumstantial evidence, Hon'ble 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."

17. In the Navarasu murder case, [INSPECTOR OF POLICE, TAMIL NADU Vs. JOHN DAVID [2011 (3) CTC 104], the Hon'ble Apex Court laid down the following guidelines in considering the 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."

18. The prosecution relies on the following circumstances:-

(i). Motive

(ii). Last Seen Theory

(iii). Transporting of the dead body in M.O.6 bike

(iv). Fingerprint evidence

(v). Deserting the dead body and M.O.6 bike.

(vi). Medical evidence

(vii). False explanation of A.2

(viii). False hue and cry of A.2.

(ix). Section 27 Evidence Act Recovery

(x). Similar blood grouping

(xi). On the occurrence day, in her house, A.1 and A.2 had sex.

19. Let us proceed to see whether these circumstances are established and whether they form a complete chain and whether without any missing link unerringly they are proceeding towards the only conclusion that the accused are the killers of the deceased.

20. It is stated by the prosecution that A.2, wife of deceased Mayavan had illegal intimacy with A.1 Ranjith Kumar, a resident of Thaneerpallam, near Mayanur.

21. Mayavan run a tea shop. A.1 frequented the shop. It is the evidence of P.W.1 that when A.1 came to the shop, illegal intimacy developed between A.1 and A.2, because of that, there were frequent quarrels between the spouses. It is also her further evidence that her son had reported the illegal affair to the Panchayat and a Panchayat was also held, her daughter-in-law was also warned, but it is of no use, she continued to have illegal contact with A.1.

22. P.W.2 Pari, a resident of the nearby Thirukambuliyur had stated about holding of Panchayat, in which he, P.W.3 Sadha @ Sadasivam and Senthilkumar, Panchayat President, have participated. They also went to Iyermalai and informed A.2's family about her bad behaviour. All warned her.

23. P.W.3 used to engage A.1's father to cut palmyra fruit from his trees and in that context, he know A.1. He corroborated P.W.2. He spoke about he having participated in the Panchayat. Of course, P.W.2 did not know A.1. But, he did not say that no Panchayat was held.

24. To prove a fact, no particular number of witness has been prescribed under the Indian Evidence Act, 1872. It is not the quantity but the quality of evidence that matters. (See RAJESH SINGH AND OTHERS Vs. STATE OF U.P. {2011 (11) SCC 444}.

25. As to the illegal intimacy between A.1 and A.2, on the complaint of Mayavan, a panchayat having been held has been clearly spoken to by P.Ws.1 to 3 and in their cross-examination no dent has been made disturbing their such evidence. In the circumstances, examination of Panchayat President Senthil Kumar to establish this fact will be superfluous.

26. It is the evidence of P.W.1 that even on the night of 12.4.2009, as to her illegal conduct, quarrel arose between A.2 and her husband. It is pertinent here to mention the evidence of P.W.3 that after one month of Panchayat, Mayavan told him that again his wife had picked up illegal relationship with A.1.

27. Thus, it is clear that A.2 had illegal intimacy with A.1. In spite of scolding of her husband and warning of the Panchayat, she continued her illegal relationship with him. On account of that, there were frequent quarrels between the spouses and thus, there was strained relationship between them. Mayavan has become an obstacle for them to carry on their illegal affair. Thus, they developed strong motive against him.

28. In a case based on the evidence of eye-witnesses motive is not necessary. But, in a case based on circumstantial evidence, it will be an incriminating circumstance lending assurance to the prosecution case. (See XAVIER RAJ Vs. STATE rep. BY INSPECTOR OF POLICE, DINDIGUL TALUK POLICE STATION {2012 (1) TLNJ 51 (Crl)}.

29. Thus, the first link in the chain of circumstances projected by the prosecution has been established.

30. It has been stated by the prosecution that lastly the deceased and A.2 were seen together.

31. In RAMREDDY RAJESH KHANNA REDDY Vs. STATE OF A.P. (2006) 3 SCC (Cri) 512, Hon'ble 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."

32. The said view has been reiterated by the Hon'ble Supreme Court in SK.YUSUF Vs. STATE OF WEST BENGAL {(2011) 3 SCC (Cri) 620} also.

33. The principle of last seen alive has been adopted in John David - INSPECTOR OF POLICE, TAMIL NADU Vs. JOHN DAVID {2011 (3) CTC 104} also.

34. In Door No.8/208, near Bagavathi Amman Kovil, Kattur, Tirukambuliyur, Mayavan lived with his family. Within the same precincts, he has two houses. In between them, there is a lane. In one house, he ran his shop and in the other house, he was having his residence.

35. It is the evidence of P.W.1 that on 12.4.2009, night, she and her two grand daughters and grand son slept in the shop, while her son and her daughter-in-law slept in the house. That was the time lastly Mayavan was seen alive by anybody.

36. It has been pointed out by the defence that in her cross-examination, P.W.1 had stated that she had not seen the spouses sleeping together, so, she had not seen them together.

37. If we read her evidence closely what she had stated is that she never saw her son and daughter-in-law sleeping together. That does not mean that her son and daughter-in-law never slept together and so also on that fateful night. The spouses sleeping together in a secluded place in the house is not an uncommon event.

38. A.2 is none other than the daughter of P.W.1's own brother Rangan. She had no need to implicate her in the death of her son. It is clear that on that day, after 8 p.m., A.2 and her husband slept together.

39. Thereafter, Mayavan's dead body was found parcelled in M.O.3 gunny bag near his TVS Suzuki bike (M.O.6), near a speed breaker, on the Mayanur-Mettu Thirukampuliyur Road. The place is not far away from Mayavan's residence. Lastly, Mayavan was seen alive with his wife around 8 p.m., within few hours, on the same night, he was found dead. The time gap between the time at which he was seen alive with A.2 and the time at which he was seen dead is small, which excludes intervention of any third person having connection with his death. Thus, the second link in the chain of circumstances also has been established.

40. It is stated by the prosecution that A.1 and A.2 have transported the dead body of Mayavan in his T.V.S bike.

41. Ex.P.8 Mahazar and Ex.P.23 rough sketch furnishes the topography and other details of Mayavan's house and the shop, situate along the Mayanur - Mettuthirukambuliyur Road.

42. The two houses belong to Mayavan. In between these two houses, there is a big lane in north-south direction. In one portion of the house, he ran his shop. In the other house, he had his residence.

43. P.W.5 Thangavel, a neighbour of Mayavan, runs a mechanic shop in the nearby Mayanur. After closing his shop in the night, he used to visit his house in his TVS-50 two wheeler. As usual, on the night of 12.4.2009, around 12'o clock, he was returning to his house from Mayanur, in his two-wheeler, on the Mayanur-Mettuthirukambuliyur Road. It is his evidence that when he was nearing his house, he had seen A.1 pulling Mayavan's TVS Suzuki bike (M.O.6) and near its petrol tank, there was a gunny bag, from the rear side, A.2 was pushing the bike. Then, the panchayat street light was also burning. The bike was driven by A.1 and it went towards east. So, it went towards Mettuthirukambuliyur.

44. P.W.6 Krishnan is residing opposite to Mayavan's house. During night, at about that time, he came out to urinate. It is his evidence that then he had also seen A.1 pulling the bike with a gunny bag on its petrol tank, while A.2 pushed the bike from behind and the bike went towards east on the road. Since A.1 is also in coconut business, P.W.6 thought that he was carrying coconuts in the gunny bag. So, he did not feel anything in seeing A.1 with a gunny bag. Since A.1 frequented Mayavan's house and A.1 and A.2 were having illegal intimacy, A.2 also having followed the bike did not then appear to P.W.6 an oddity.

45. During the cross-examination of P.ws.5 and 6, no dent disturbing their such evidence has been made by the defence. P.Ws.5 and 6 have no enmity either towards A.1 or towards A.2. They have no axe to grind as against them. Their evidence is natural and cogent.

46. Thus, it is established that during that odd hour, from the house of Mayavan, A.1 and A.2 have transported a big parcel in a gunny bag in Mayavan's TVS Suzuki (M.O.6). So, at that odd hour, both the paramour (A.1) and the concubine (A.2) were seen together, near the concubine's house, pushing her husband's bike, carrying a big gunny bag. So, one more link in the chain of circumstances has been established.

47. It is stated by the prosecution that the gunny bag containing Mayavan's dead body and his bike were deserted by A.1 on the road, near a speed breaker.

48. P.W.2 is having his house in Mettuthirukambuliur along the Mettuthirukambuliur-Mayanur road. Near his house, on the said road, there is a speed breaker. Ex.P.3 observation mahazar and Ex.P.21 rough sketch furnishes location details, describes P.W.2's house, the nearby road, the speed breaker and the surrounding area.

49. On the other side of the road, P.W.3 is having his coconut thope and land. From his land, the nearby road can be seen. There are street lights also. Irrigating the land during day time since results in less water to the land, P.W.3 used to irrigate his land during night time and P.W.4 Anandhan used to assist him.

50. On 12.4.2009, night, as usual, P.Ws.3 and 4 were irrigating the land. Then street lights were burning. Around 2 a.m., A.1, who is already known to them, came driven a bike, carrying a gunny bag, near its petrol tank, when it neared the speed breaker, it had stopped, in the circumstances, A.1 had left it and ran away. P.Ws.3 and 4 having found it very strange, went near it, blood was dripping from the gunny bag and a human toe was also protruding. P.Ws.3 and 4 informed P.W.2. P.W.2 also came and witnessed this and they have informed Ramanikumar, Village Assistant, who gave information to P.W.7 Elangovan, VAO, Thirukambuliur.

51. It is the evidence of P.Ws.2 to 4 and 7 that when the gunny bag was untied, inside, the dead body of Mayavan was found, a red colour nylon rope (M.O.1) was tied around the neck, it was wearing a banian (M.O.4) and lungi (M.O.5). The deserted TVS Suzuki (M.O.6) belongs to Mayavan. On information, P.W.1 came identified her son's dead body.

52. There was no need for P.Ws.2 to 4 and 7 to give false evidence against A.1. P.Ws.1 to 4 and 7 have withstood the lengthy cross-examination of the defence. It did not result in anything in favour of the accused. Their evidence is clear, cogent and acceptable. Thus, it is clear that during that dead night, A.1 deserted Mayavan's bike and also his dead body packed in a gunny bag. Thus, one more link in the chain of circumstances has been established.

53. It is stated by the prosecution that a chance finger print then lifted from M.O.6 bike tallied with the specimen finger print of A.1.

54. P.W.15 Chinnathambi Inspector, Mayanur Police Station did the first investigation and he is the main Investigation Officer in this case. On his intimation, P.W.11 Manickam, Finger Print Expert, visited the spot where Mayavan's dead body in the gunny bag and his bike were found. He examined the bike and lifted a chance print (M.1) from the bike.

55. P.W.11 is an official. In his cross-examination, nothing questioning his lifting of the chance print (M.1) from the bike on that day has been made to him by the defence. So, lifting of M.1 chance print is beyond pale of any controversy.

56. P.W.11 received a specimen (S.1) fingerprint of the accused from the police. He took enlarged photos of M.1 and S.1 (Ex.P.19). He compared M.1 and S.1. Both have 8 similar ridge characteristics.

57. In MOHANLAL AND ANOTHER Vs. AJIT SINGH AND ANOTHER {1978 (3) SCC 279}, it was held that similarity of two fingerprints can be established even on 8 or even on less identical characteristics.

58. Thus, the latent print (M.1) tallied with the specimen print (S.1). They are of one and the same person. (See Ex.P.18 Expert's certificate). It becomes relevant under Section 45 of the Indian Evidence Act, 1872.

59. Specimen finger print was taken from A.1 by the police, at a time when the investigation was pending.

60. Admittedly, no order has been obtained from the Court for taking specimen fingerprint from A.1.

61. The defence contended that unless the specimen finger print was taken from the accused with the orders of a Magistrate, it cannot be used to compare a chance print, consequently, Ex.P.18 Expert's report has to be eschewed.

62. In SHANKARIA Vs. STATE OF RAJASTHAN {1978 (3) SCC 435}, it was held as under:-

"83. Mr.Gambhir next contends that in view of Section 5 of the Identification of Prisoners Act, it was incumbent on the Police to obtain the specimen thumb impressions of the appellant before a Magistrate, and since this was not done, the

opinion rendered by the Fingerprint Expert, Mr.Tankha, by using those illegally obtained specimen finger-impressions, must be ruled out of evidence.

84. The contention appears to be misconceived because in the State of Rajasthan, the Police were competent under Section 4 of the Identification of Prisoners Act, to take the specimen fingerprints of the accused, and this they did, in the instant case, before the Superintendent of Police, Shri K.P.Srivastava. It was not necessary for them to obtain an order from the Magistrate for obtaining such specimen fingerprints."

63. In the sensational triple murder of Australian Christian Missionary, (STAINES case), which shook the entire Nation (RABINDRA KUMAR PAL @ DARA SINGH VS. REPUBLIC OF INDIA {2011 (2) SCC 490}, the Honourable Apex Court held as under:-

"10. ? 'Furnishing evidence' in the latter sense could not have been within the contemplation of the Constitution-makers for the simple reason that-though they may have intended to protect an accused person from the hazards of self-incrimination, in the light of the English law on the subject-they could not have intended to put obstacles in the way of efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions of parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice. ?

11. ? When an accused person is called upon by the court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness'.

12. ? A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous because they are unchangeable except in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in order to lend assurance to the court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of 'testimony'.

64. It is relevant here to note the following observations of this Court made in Crl.R.C.No.530 of 2005 on 26.7.2011 in N.MANI Vs. STATE by D.S.P, C.B.C.I.D, Metro Wing, Chennai. The Supreme Court and the Division Bench of this court have also in the following cases, upheld the authority of the police officer under section 4 of the Identification of Prisoners Act to take measurements of the accused including finger print impressions.

(a) In the judgment reported in 1978 Crl LJ 1251 (Shankaria v. State of Rajasthan), the Supreme court rejected the contention that "the specimen finger print impressions illegally obtained by the police not before the Magistrate without any direction must be ruled out of evidence of expert. The Supreme court held that the police were competent under Section 4 of the Identification of Prisoners Act to take specimen finger prints of the accused and it was not necessary for them to obtain any order from the Magistrate for obtaining such specimen finger prints."

65. Thus, it is clear that the chance print lifted from Mayavan's M.O.6 bike and the specimen fingerprint of A.1 are one and the same. So, one more link in the chain of circumstances has been firmly established.

66. It is stated by the prosecution that during her examination under Section 313 Cr.P.C. A.2 gave a false explanation.

67. In Priyadarshini Mattoo case, {SANTOSH KUMAR SINGH Vs. STATE THROUGH CBI 2010 (9) SCC 747}, the Honourable Apex Court held as under:-

It has been held time and again that a false plea taken by an accused in a case of circumstantial evidence is another link in the chain."

68. During her examination under Section 313 Cr.P.C., A.2 filed written statement under Section 233 (2) Cr.P.C that on the night of 12.4.2009, in their house, she slept along with her children. We have seen elaborately that her children slept with their grand mother (P.W.1), while A.2 and her husband slept together separately. Around 2 a.m., the dead body was found, near a speed breaker, on the Mayanur-Mettuthirukambuliyur road by P.Ws.2 to 4, 7 and by the villagers. But, they did not say that they have seen A.2 there. The complaint was given by P.W.1. A.2 did not file a complaint on the death of her husband. So, she made a false explanation during her examination under section 313 Cr.P.C. Thus, one more incriminating circumstance in the chain of circumstances as against her has been established.

69. It is stated by the prosecution that on the night of 12.4.2009, A.2 made false hue and cry.

70. P.W.6 Krishnan, who is residing opposite to Mayavan's house had stated that around 3 a.m., there was huge alarm near his house. A.2 shouted that certain persons from Mahadanapuram tied her husband and took him away.

71. A.2 slept with her husband. She only knows what had happened to him. If really strange persons have taken him, she would have informed her neighbours. But, she did not do so. When her

husband's dead body was found on the road, she did not go there. Only when P.W.7 informed the death of her husband she made a cry that her husband was taken away by persons from Mahadhanapuram. She did not give any complaint that her husband was so taken by such and such persons from Mahadhanapuram.

72. So, she raised a false hue and cry. In the circumstances, this is an incriminating circumstance as against her. Thus, one more link in the chain of circumstances has been established.

73. On 13.4.2009, at about 2.50 p.m., at the Government Head Quarters Hospital, Karur, P.W.10 Dr.Natarajan dissected Mayavan's dead body and examined it. He found many injuries. There were cut injuries on his right parieto occipital region. It is bone deep. There were abrasions on both side of his forehead, over right shoulder, right side abdomen and right knee. There was a rope mark encircling the whole neck (See Ex.P.17 post mortem certificate). Hyoid bone was also found broken (See Ex.P.15 Bone Case report). There was compression of neck. It was ante-mortem in nature.

74. P.W.11 opined that the head injuries would have been possible by assaulting him on the head using the blunt portion of a crowbar like M.O.11 and the compression of neck is due to tying of the neck by M.O.1 nylon rope and fracture of hyoid bone and rope mark around the neck shows that there was strangulation.

75. Further, the viscera examination disclosed phosphide, a poisonous substance in the stomach and ethyl alcohol in intestine, liver and kidney (Ex.P.14 viscera report). So, the deceased had been poisoned.

76. One of the sign of phosphide poisoning is vomitting and death would be imminent, it will be a matter of hours, if not given urgent medical care. P.W.1 had stated that during that night chicken curry was served to her son Mayavan by his wife, after one hour of taking it, he had vomitted. Of course, the vomitted matter has not been seized and examined. But, in the circumstances of the case and the time lapse, it has become impracticable. But, the possibility of the deceased having been poisoned has not been ruled out by P.W.10.

77. Of course, acquiring of the phosphide has not been established. But during that night, chicken curry was cooked by A.2, it was served to him by his wife. So, it shows that she had provided him poisoned meals.

78. The stomach contents showed that the deceased had consumed alcohol. Since on that day, she had prepared chicken curry, the deceased seems to have had alcohol. In the circumstances, it is not an uncommon or a strange event. In the circumstances, it was a routine happening. A Court cannot ignore ordinary course of events in everyday's walks of life.

79. Thus, the deceased did not suffer natural death. He suffered a horrible death. He was poisoned, strangulated, beaten with a blunt weapon and he died of cumulative effect of head injury, compression neck and poisoning.

80. Due to the combined effect of all the above, the death has occurred to him.
81. In the circumstances, the argument of the defence that it has not been specifically established that his death was due to a specific cause will not arise. He suffered homicidal death is beyond any doubt.
82. Thus, there is incriminating medical evidence. There is one more link in the chain of circumstances has been established.
83. Recovery of certain incriminating material objects on the disclosure statement of the accused has been pressed into service in this case.
84. 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-culpulatory portion in the confession of an accused alone is admissible.

85. The scope and ambit of Section 27 were 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"

86. 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."

87. The evidence of P.W.7 Elangovan, VAO, P.W.15 Chinnathambi, Inspector is that on 14.4.2008, early morning 3 a.m., near Kulithalai big bridge bus stop, in the presence of P.W.7 and his Assistant , A.2 was arrested and on her information, on the same day, at about 6.30 a.m., in Jodarpalayam, in Namakkal District, A.1 was arrested. In the presence of the said Revenue Staff, P.W.15 had recorded Ex.P.24 confessional statement from A.2 and Ex.P.25 confessional statement from A.1. It is also their evidence that the accused have took them to Mayavan's house and from a place, near the land shown by them, P.W.15 had recovered blood stained earth (M.O.9) and from the backyard, recovered M.O.11 crowbar. Further, according to P.Ws.7 and 15 from behind his house, A.1 had produced blood stained lungi (M.O.14) and blood stained shirt (M.O.15). The said material objects were recovered by him under seizure mahazars, which were also attested to by the Revenue Staff. The recording of confessional statements and recovery of the material objects were also confirmed by P.W.7.

88. It has been contended by the defence that P.W.1 had stated that on the next day of the occurrence, at about 10 a.m., at the Police Station, she had seen both the accused and P.W.6 had stated that on the occurrence day, at about 3.30 a.m., during night, police took A.2 in jeep. Thus, their arrest, confessions, and the recoveries cannot be believed.

89. The complaint was given only in the early morning. Around 6 a.m., police came to the place where the dead body of Mayavan was found. Further, the complaint was not given by A.2. The complaint was given by P.W.1. During that night, near the house of Mayavan's house, there were huge gathering. Then, police did not come. Police came only in the early morning. In these circumstances, obtaining few sentences from the mouth of P.Ws.1 and 6, which are against the reality of the situation will not make the recovery unbelievable.

90. The accused did not say that they were harassed by Police. The accused did not say that P.W.7 and his Assistant had enmity towards them. They are Revenue Staff. P.W.7 is an independent witness. They have no axe to grind as against them to implicate them in a murder case. (See JOHN DAVID {2011 (3) CTC 104}.

91. In the facts and circumstances, information recorded from A.1 and A.2 and the recovery of the weapon and the blood stained clothes based on that information has been established. Thus, one more link in the chain of circumstances has been established.

92. In the presence of P.W.7 and his assistant on the night of 12.4.2009 blood stains were collected from the thar road, near the speed breaker, on the Mayanur-Mettuthirukambuliyur road, where the gunny bag containing the dead body dripping the blood was found. The blood stains in Mayavan's house (M.O.9) was collected in the presence of witnesses. These blood stains and the blood stains in Mayavan's dresses (M.Os.4 and 5), the blood stains in the dresses of the accused viz., lungi (M.O.14), shirt (M.O.15), blood stains found in A.2's dresses viz., saree (M.O.20) and blouse (M.O.21) are found to be human blood and are 'B' group. They offer link between the accused and the dead body of Mayavan. They show the link between the scene place in Mayavan's house and the place where Mayavan's dead body was found. So, one more link in the chain of circumstances has been established.

93. On 12.4.2009, at about 2 a.m., on the rear side of the house of P.W.2, situate on the Mayanur-Mettuthirukambuliyur road, near a speed breaker, the dead body of Mayavan was found in a gunny bag. Around 3 a.m., P.W.7 VAO brought P.W.1 to the said place. She had identified her son's dead body. Therefore, she gave Ex.P.1 statement to P.W.7. From there, Mayanur Police Station is at a distance of 2 kms. At the Mayanur Police Station, with his endorsement (Ex.P.2), P.W.7 presented P.W.1's Ex.P.1 complaint. P.W.15 Chinnathambi, Inspector, registered the case and he had visited the said spot. On the same day, at about 8 a.m., the Express FIR (Ex.P.21) reached Judicial Magistrate No.II, Kulithalai. Thus, there was no delay either in lodging the F.I.R or in sending it to the Court.

94. According to the defence, P.W.1 had stated in her cross-examination that she had seen the dead body of her son at 8 a.m. So, the real complaint has been suppressed, consequently, FIR is also false.

95. By that time, P.W.1 an old lady, then aged about 70 years was brought to the road, near P.W.2's house, in Mettuthirukambuliyur, to see the dead body of her son, packed in a gunny bag, crowd gathered, by the time, early morning also about to begin. The old lady was not wearing wrist watch. She did not give exact time. It is only her rough estimation of time. She was seen at about 3 a.m., by P.Ws.2, 3, 4 and 7. The overwhelming evidence shows that she came there around 3 a.m. So, in the circumstances, Ex.P.1 is the first complaint. So, the FIR in this case is not doubtful.

96. It is stated by the prosecution that on 12.4.2009 night, in her house, A.1 and his concubine (A.2) had sex.

97. P.W.15 Chinnathambi, Inspector stated that in the course of investigation, it came to light that after the death of her husband, in her house, A.2 had sex with A.1 and she was wearing the very same dress.

98. Both A.2 and A.1 were arrested on 14.4.2009 at separate places. Medical examination was done to her. Her vaginal smear examined did not contain semen. The potential test conducted for A.1 revealed that he is capable of performing sexual act. It is not stated that he had washed his clothes. On examination, his dresses did not contain semen. Of course, A.2's in-skirt M.O.22 contained semen. To link it with A.1 there is no incriminating scientific evidence. So, by the mere presence of semen in M.O.22, it cannot be conclusively said that on that day, she had sex with A.1. So, this circumstance projected by the prosecution is not established.

99. By this alone, we cannot reject the entire prosecution case. We have seen several other incriminating circumstances projected by the prosecution which have been established.

100. In PRIYADARSHINI MATOO case {2010 (9) SCC 747} quoting Trimukh Maroti Kirkan v. State of Maharashtra {2007 (1) SCC (Cri) 80}, the Hon'ble Apex Court observed as under:-

"12. ? The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite

tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence."

and again: (SCC p. 690, para 14) "14. If an offence takes place inside the privacy of a house and in such circumstances, where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case."

101. Now, we have to see the cumulative effect of the proved circumstances.

102. A.2 and deceased Mayavan are spouses. A.2 was in illegal intimacy with A.1. In spite of the warning of the Panchayat and of her husband, she continued her illegal affair with him; on account of her such conduct; there were frequent quarrels between the spouses; so, she and her paramour found Mayavan an obstacle, so, they had strong motive and reason to eliminate him; lastly, the deceased was seen alive with her; in the circumstances, in his house, on 12.4.2011, night, he was poisoned, strangulated, beaten to death with a crowbar and his dead body was packed in a gunny bag; A.1 and A.2, have transported this consignment in Mayavan's TVS Suzuki bike and A.1 driven the bike with the consignment containing Mayavan's corpse; unfortunately, a speed breaker, blocked his (Mayavan's last) journey, so, he had left the bike and the corpse and ran away, the chance finger print lifted from the bike tallied with the specimen finger print of A.1; there is incriminating medical evidence; recovery of weapons used in the commission of the offence, the blood stains found in Mayavan's house, the blood stains found in the place where his dead body was found, and the blood stains found on the dresses of the deceased, the blood stains found on the dresses of A.1 and A.2 were all one and the same; to escape herself, A.2 made false hue and cry and also made some false explanation. Cumulatively taken all the above incriminating circumstances, without any missing link, form a complete chain, unerringly proceeding towards the only conclusion that the accused are the killers of the deceased.

103. Thus, by overwhelming evidence, prosecution has established its case beyond all reasonable doubts. So, the accused were rightly found guilty under Section 302 r/w 34 IPC by the learned Sessions Judge, Karur. We concur with his findings. In the circumstances, they were rightly sentenced.

104. In the result, the Criminal Appeal is dismissed. The conviction recorded and the sentences awarded to the appellants by the learned Sessions Judge, Karur in S.C.No.58 of 2010, on 21.12.2010

are confirmed.

sj/mvs.

To

1. The Sessions Judge, Karur.
2. The District Collector, Karur.
3. The Superintendent of Police, Karur.
4. The Superintendent,Central Prison,Tiruchirappalli.
5. The Superintendent,Special Prison for Women, Tiruchirappalli.
6. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
7. The Inspector of Police, North Police Station Tuticorin.