

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
02.04.2019	30.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL.A[MD] Nos.264, 352 of 2016 and 101 of 2019

Sivaranjith : Appellant in Crl.A.(MD].No.264 of 2016
/Accused No.1

Gajendra Raja : Appellant in Crl.A.(MD].No.352 of 2016
/De facto Complainant

Sakthikumar : Appellant in Crl.A.(MD].No.101 of 2019
/Accused No.2

Vs.

State rep by
the Inspector of Police, सत्यमेव जयते
Rajapalayam South Police Station,
Crime No.306 of 2013.

: Respondent in Crl.A.(MD].No.264 of 2016

1.Sivaranjith
2.Sakthi Kumar

3.State represented by

The Inspector of Police,
South Police Station, Rajapalayam,
Crime No.306 of 2013, Virudhunagar District.

: Respondents in Crl.A.(MD].No.352 of 2016

State rep by

the Inspector of Police,
Rajapalayam South Police Station,
Crime No.306 of 2013.

: Respondent in Crl.A.(MD].No.101 of 2019

PRAYER in Crl.A.(MD].Nos.264 of 2016 and 101 of 2019 :

Appeals are filed under Section 374 of the Code of Criminal Procedure against the Judgment dated 18.04.2016 made in S.C.No.53 of 2015 on the file of the Principal Sessions Court, Srivilliputhur.

PRAYER in Crl.A.(MD].No.352 of 2016 : Appeal is filed under Section 372 of the Code of Criminal Procedure to call for the records and enhance the punishment for the offences under Sections 364-A and 302 IPC from life sentence to death sentence in S.C.No.53 of 2015, dated 18.04.2016 on the file of the Principal Sessions Court, Srivilliputhur, Virudhunagar District.

Crl.A.(MDJ.No.264 of 2016

For Appellant Mr.S.Hameed Ismail
For Respondent Mr.K.K.Ramakrishnan
Additional Public Prosecutor

Crl.A.(MDJ.No.352 of 2016

For Appellant Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu
For Respondent No.1 Mr.S.Hameed Ismail
For Respondent No.2 Mr.S.Ramasamy
For Respondent No.3 Mr.K.K.Ramakrishnan
Additional Public Prosecutor

Crl.A.(MDJ.No.101 of 2019

For Appellant Mr.S.Ramasamy
For Respondent Mr.K.K.Ramakrishnan
Additional Public Prosecutor

COMMON JUDGMENT

सत्यमेव जयते

P.N.PRAKASH, J.

The appellants are accused Nos.1 and 2 in S.C.No.53 of 2015, on the file of the Principal Sessions Court, Srivilliputhur. The Trial Court framed three charges against the accused, as detailed below.

Charge	Accused	Penal Provisions
1	1 and 2	364-A IPC
2	1 and 2	302 IPC
3	1 and 2	201 IPC

2 By a judgment and order dated 18.04.2016, the Trial Court convicted the accused and sentenced them, as under:-

Accused	Section of Law	Sentence of imprisonment	Fine amount
1 and 2	364-A IPC	To undergo imprisonment for life.	Rs.3,000/- each in default to undergo rigorous imprisonment for one year.
1 and 2	302 IPC	To undergo imprisonment for life.	Rs.5,000/- in default to undergo simple imprisonment for three months.
1 and 2	201 IPC	To undergo rigorous imprisonment for one year.	Rs.1,000/- in default to undergo simple imprisonment for one month.

The sentences were ordered to run concurrently.

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

3.1 Gajendra Raja [PW-1] is an affluent mill owner and has several businesses, including real estate. The deceased, in this case, is his son - Premkumar, who was around 18 at the time of his death. Apart from Premkumar, Gajendra Raja [PW-1] has a daughter - Deepa. On 03.05.2013, Gajendra Raja [PW-1] left his son to manage the mill and went with his wife - Vigneshwari and his daughter - Deepa to Ernakulam in Kerala. Around 06.00 a.m., on 05.05.2013, Gajendra Raja [PW-1] received a phone call from his aunt - Pankajammal

[PW-3], who informed that Premkumar left the house around 07.00 to 08.00 p.m., on the previous night, i.e., on 04.05.2013 and had not returned home. She also told him that Premkumar handed over the day's collection of Rs.80,000/- to her. On 06.05.2013, Gajendra Raja [PW-1] returned home and searched for his son, but, in vain. So, he gave a written complaint [EX-P1] to the police, wherein, he has given the two mobile numbers, viz., 94864 88386 and 86084 84852 used by Premkumar and has further stated that his son went missing from 08.00 p.m., on 04.05.2013.

3.2 Based on the complaint [EX-P1], Murugesan [PW-26], Sub Inspector of Police, registered a case in Crime No.306 of 2013, on 06.05.2013, at 11.45 hours for "boy missing" and prepared the printed First Information Report, [EX-P32], which reached the jurisdictional Magistrate at 12.00 hours, on 07.05.2013, as could be seen from the endorsement made thereon. The investigation of the case was taken over by Gandhi, Inspector of Police, [PW-33], who gave a requisition to the Cyber Cell Unit, attached to the office of the Superintendent of Police asking for the Call Detail Records (CDRs) of the two mobile numbers mentioned above. On 17.05.2013, he received the necessary details including the IMEI numbers of the mobile phone used by Premkumar.

3.3 On 17.05.2013, at 2.00 p.m., Sivaranjith [A-1] and Sakthikumar [A-2] appeared before Arivazhagan [PW-22], Village Administrative Officer. Sivaranjith [A-1] gave an extra-judicial confession [EX-P11]. After recording the extra-judicial confession (EX-P11), Arivazhagan [PW-22] handed over Sivaranjith [A-1] and Sakthikumar [A-2] to Gandhi, Inspector of Police, [PW-33], who placed them under arrest on 17.05.2013, at 4.30 p.m. and recorded their police confessions. Thereafter, Gandhi [PW-33] filed alteration report [EX-P40], altering the case from one of "boy missing" to one under Sections 364-A, 368, 201 and 302 IPC. Based on the joint disclosure statement of Sivaranjith [A-1] and Sakthikumar [A-2], the police went to the factory premises of M.R.Process in SIDCO Industrial Estate, from where, the body of Premkumar was exhumed in the presence of Dhanalakshmi, Tahsildar, [PW-4] around 09.00 a.m., on 18.05.2013. Gandhi [PW-33], Inspector of Police, conducted inquest over the body of the deceased between 09.00 a.m and 11.00 a.m. and the inquest report was marked as EX.P49.

3.4 At the request of the police, Dr.Chitra Sivasankari [PW-12] conducted spot postmortem and in her evidence as well in the postmortem certificate [EX-P3], she has stated as follows:-

“External Examination:

1]. Ligature mark three in number one below the other with a gap of 2 mm each over the neck region most prominent behind the left ear lobule and above adam's apple.

"Internal Examination:

1. Thorax -: No rib fracture. Hyoid bone intact. No fracture. Heart - soft, friable, dark brown in colour. Lungs - soft, decomposed. Liver - dark brown in colour, c/s reddish, soft, friable, decomposed. Spleen - soft, friable. Kidneys - soft, friable, decomposed. Intestine - distended with gas. Skull - intact. Brain matter decomposed.

Following viscera sent for chemical analysis.

1. Stomach [sample] and its contents.
 2. Intestine [sample] and its contents.
 3. Liver sample
 4. Kidney sample
 5. Preservative
- Skull and femur bone preserved".

3.5 The viscera was sent to the Tamil Nadu Forensic Science Laboratory for examination and the toxicology report dated 30.08.2013, [EX-P42] disclosed the presence of diazepam in the visceral organs, viz., stomach, intestine and liver. No alcohol was detected in any of the organs. After receiving the viscera report, Dr.Chitra Sivasankari [PW-12] gave the final opinion as under:-

“Final Opinion:-

Death due to asphyxia and tissue anoxia due to strangulation and tablet intoxication.”

3.6 In the presence of witnesses - Arivazhagan [PW-22], V.A.O. and Veeraputhiran [not examined], Gandhi [PW-33] prepared the

Observation mahazar [EX-P15] and Rough Sketch [EX-P48]. DNA profiling was done by the Tamil Nadu Forensic Science Laboratory and the DNA report [EX-P7] revealed that the deceased is the son of Gajendra Raja [PW-1] and Vigneshwari. Based on the disclosure statement of Sivaranjith [A-1], the police seized a TVS Apache motorbike, bearing Registration No.TN-67-AQ-5315, [MO-7], a Grey Colour Maruti Omni van, bearing Registration No.TN-67-S-7413 [MO-8] and a Samsung Mobile Phone with Airtel Sim [MO-35] under the cover of mahazar [EX-P19]. From the terrace of one Nagaraj, Councillor, the police seized a 650 ml. empty beer bottle, [MO-11], a 180 ml. brandy bottle with 50 ml. brandy [MO-12] and a 180 ml. empty brandy bottle [MO-10] under the cover of mahazar [EX-P20]. On the disclosure statement of Sakthikumar [A-2], the police seized a Nokia Mobile Phone [MO-3], containing two sim cards, viz., BSNL No. 94864 88386 and Vodafone No.86084 84852, HTC Mobile Phone [MO-31], MTS Mobile Phone [MO-32] and a knife [MO-34] under the cover of mahazar [EX-P21]. After recoveries, the accused were sent to judicial custody. Again, on 03.06.2013, the police took custody of Sivaranjith [A-1] and Sakthikumar [A-2] and recovered a Hero Honda Splendor Plus motorbike bearing Registration No.TN-67-J-7913 [MO-5] under the cover of mahazar [EX-P26].

3.7 On 17.10.2013, Ramanarayanan [PW-34], Inspector of Police, took over the case for investigation. He examined some witnesses and recorded their statements. On his transfer, Nagarajan [PW-35], Inspector of Police, continued the investigation. He also examined some witnesses and recorded their statements. After completing the investigation, Nagarajan [PW-35] filed final report in P.R.C. No.24 of 2014 before the learned Judicial Magistrate, Rajapalayam, against Sivaranjith [A-1] and Sakthikumar [A-2] for the offences under Sections 364-A, 302 and 201 IPC.

3.8 On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.53 of 2015 and tried by the Principal Sessions Judge, Srivilliputhur.

3.9 The Trial Court framed charges against the accused, as detailed in Paragraph No.1, supra. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 35 witnesses, marked 57 exhibits and 37 material objects. Both Sivaranjith [A-1] and Sakthikumar [A-2] gave written explanations

under Section 313 Cr.P.C. which will be discussed later. No witness was examined on the side of the accused nor any document marked.

3.10 The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 18.04.2016, convicted and sentenced the accused, as detailed in Paragraph No.2 supra. Challenging the above said conviction and sentence, the appellant/Accused No.1 filed Crl.A.(MD].No.264 of 2016. Gajendra Raja [PW-1] has filed Crl.A.(MD].No.352 of 2016 under the proviso to Section 372 Cr.P.C., for enhancement of sentence, *i.e.*, for awarding them death sentence.

3.11 When Crl.A.(MD].No.264 of 2016 along with Crl.A.(MD].No.352 of 2016 came up for hearing before us, we noticed that Sakthikumar [A-2] had not filed any appeal challenging his conviction and sentence and so, on 04.02.2019, we directed the Prison authorities to produce him before us, on 08.02.2019. Accordingly, on 08.02.2019, he was produced before us and he sought two weeks time for engaging a counsel. On his request, the case was adjourned to 22.02.2019. On 22.02.2019, he was produced before us and he prayed for appointment of legal aid counsel. On his request, we nominated

Mr.S.Ramasamy, [Enrollment No.117/1994], an advocate of 25 years of standing, to represent Sakthikumar [A-2] and file an appeal on his behalf. Accordingly, Sakthikumar [A-2] filed an appeal with delay, which was condoned. The appeal was taken on file as "Crl.A.(MD).No. 101 of 2019". The three appeals are now before us for disposal.

4 Heard Mr.S.Hameed Ismail, learned counsel for the accused No.1, Mr.S.Ramasamy, learned counsel for the accused No.2, Mr.V.Kathirvelu, learned Senior Counsel representing Mr.K.Prabhu, learned counsel on record for the *de facto* complainant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor for the State.

5 What started off as a simple case of "boy missing" evolved into a case of "kidnapping for ransom, murder and concealment of evidence" and that is why, charges for the offences under Sections 364-A, 302 and 201 IPC were framed by the Trial Court. This case is predicated on circumstantial evidence and therefore, we are required to bear in mind the line of enquiry on this aspect as enunciated in the Constitution Bench judgment of the Supreme Court in **Govinda Reddy vs. State of Mysore**¹, wherein, it was observed as under:

1 AIR 1960 SC 29

“5. The mode of evaluating circumstantial evidence has been stated by this Court in Hanumant Govind Nargundkar v. State of Madhya Pradesh [AIR 1952 SC 343] and it is as follows:

“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.”

6 According to the prosecution, the breakthrough in the case came with the appearance of Sivaranjith [A-1] and Sakthikumar [A-2] before Arivazhagan [PW-22], V.A.O., on 17.05.2013 at 2.00 p.m., purportedly from and out of the blue for confessing to the crime. Arivazhagan [PW-22] has stated that he is the Village Administrative Officer of Appeneri Village; during the year 2012 - 2013, he was the Village Administrative Officer of Pudhupalayam Village; on 17.05.2013, one Sivaranjith, S/o.Balakrishnan and Sakthikumar, S/o.Valaiyapathi came to his office and stated that they wanted to give a confession; so, he [PW-22] recorded the statement of Sivaranjith

[A-1] and after recording the same, it was signed by Sivaranjith [A-1] and Sakthikumar [A-2]. The said statement was marked as [EX-P11]. The precis of the confession statement of Sivaranjith [A-1] is as follows:-

"My father - S.S.Balakrishnan is the owner of S.R.Process, which manufactures plastic covers and I was assisting him in the business. I gave Rs. 15,00,000/- to my friend for currency doubling business and lost. So, my father was angry with me. In order to tide over the debts, my friend - Sakthikumar [A-2] and I decided to abduct Premkumar, who was known to us and demand ransom from his father - Gajendra Raja [PW-1]. So, I asked Sakthikumar [A-2] to procure some liquor and I called Premkumar from a public call office by dropping an one rupee coin and asked him to join us for a drink. Premkumar came by Hero Honda Splendor Plus motorbike bearing Registration No.TN-67-J-7130. I took my Apache motorbike bearing Registration No.TN-67-AQ-5315 and on the way, we picked up Sakthikumar [A-2] from

Thendral Nagar. All the three of us went to the terrace of Councillor Nagaraj's house in Thendral Nagar and boozed. We mixed sleeping tablets in Premkumar's drink. Premkumar drank brandy and we consumed beer. Within a short while, Premkumar fainted. Sakthikumar [A-2] and I took my Apache motorbike and came to Srirangapalayam Railway Gate, from where I picked up my Maruti Omni Van bearing Registration No.TN67-S-7413 and came back to Councillor Nagaraj's house. Sakthikumar [A-2] followed me in my Apache motorbike. After reaching Councillor Nagaraj's house, we took Premkumar and dumped him in the back seat of the Omni Van and took him to my father's factory. There, we strangled him with a wire and murdered him. After that, we dug a pit in the mill and buried him, after removing all his clothes. We took his clothes in a gunny bag and burnt the same near Kothai Nachiyarpuram with petrol that was taken from my motorbike, around 03.30 a.m, on

05.05.2013. I handed over the mobile phone of Premkumar to Sakthikumar [A-2]. Sakthikumar [A-2] took my Apache motorbike and went to Srirangapalayam Railway Gate. I went behind him by my Omni Van. I parked my car near Srirangapalayam Railway Gate and went in the Apache motorbike driven by Sakthikumar [A-2] to Councillor Nagaraj's house in Thendral Nagar and took Premkumar's bike and left it with the key near Chevakkadu in Thendral Nagar. Thereafter, I dropped Sakthikumar [A-2] near his house and went home. After dawn, on 05.05.2013, around 07.00 a.m., we went to Thendral Nagar and found that Premkumar's motorbike was missing. Thereafter, at 07.30 p.m., we came to Annappa Raja School Ground and we used the mobile phone of Premkumar to call his father and gave two missed calls to him. His father called back and Sakthikumar [A-2] demanded Rs.1.50 crores from him as ransom for releasing Premkumar. A week later, when the police started searching for us, we

got scared, since we had buried his body in my father's factory and so, we have come before you and surrendered".

7 As stated above, Arivazhagan [PW-22] recorded the statement of Sivaranjith [A-1], but, obtained the signature of both Sivaranjith [A-1] and Sakthikumar [A-2] in the statement and took both of them to the Inspector of Police, Rajapalayam South Police Station and handed them over, at 16.30 hrs. on 17.05.2013 along with special report [EX-P14]. At this juncture, it may be relevant to state here that Arivazhagan [PW-22] has stated in the chief-examination that the Inspector of Police told him that it was already 06.00 p.m., and so, they could go for recovering the body on the next day. We are indeed very surprised, because, in the month of May, Rajapalayam will be in the peak of summer and the sun will set only after 06.45 p.m. When the accused had confessed to the police that they have buried the body in a particular place, first of all, the Investigating Officer should have posted at least a Constable in the place mentioned by the accused in the confession statement to ensure that the evidence is preserved. Nothing of that sort was done.

8 Be that as it may, Gandhi [PW-33], Inspector of Police, has stated that he prepared the alteration report, [EX-P40], altering the case from one of "boy missing" to one under Sections 364-A, 368, 201 and 302 IPC on 17.05.2013 itself, based on the *ipse dixit* (confession statement) of Sivaranjith [A-1] and even without verifying whether there was an iota of truth in his confession. To give legal sanctity to the investigation, the Investigating Officer has sent the extra-judicial confession [EX-P11] and the alteration report [EX-P40] to the jurisdictional Magistrate who has received it on 17.05.2013 itself. Whereas, according to the police, only on 18.05.2013, the body was exhumed from a plot allotted to Sivaranjith's [A-1's] father in the SIDCO Industrial Estate.

9 Gandhi [PW-33], Inspector of Police, has further stated that he questioned Sivaranjith [A-1] and Sakthikumar [A-2] and recorded their police confession statements in the presence of Arivazhagan [PW-22] and Veeraputhiran [not examined], on 17.05.2013. The admissible portion of the confession statement was marked as EX-P22. Gandhi [PW-33] requisitioned the services of Dhanalakshmi [PW-4], Tahsildar of the area and on 18.05.2013, the police party, along with the Revenue Officials and the accused, went

to the place shown by Sivaranjith [A-1] and Sakthikumar [A-2] and exhumed the body. As stated above, spot postmortem was done by Dr.Chitra Sivasankari, [PW-12] and the postmortem certificate issued by her was marked as EX-P3.

10 Gajendra Raja [PW-1], in his evidence, has stated that he is a mill owner and is also into real estate business and he also owns 12 acres of agricultural land; his son - Premkumar was assisting him in his business; he went with his wife - Vigneshwari and his daughter - Deepa to Ernakulam in Kerala on 03.05.2013, leaving Premkumar to look after his business; he received a phone call at 06.00 a.m., on 05.05.2013, from his aunt - Pankajammal [PW-3] that Premkumar came home on 04.05.2013 and handed over the day's collection of Rs. 80,000/- to her and left around 08.00 p.m., and had not returned home; immediately, he called his son's mobile number - 94864 88386, but, the mobile was switched off; he asked his brother - Suriyanarayanan [PW-2] to go and search for Premkumar; on 05.05.2013, at 07.45 p.m., he received a missed call on his mobile number - 98429 91173 from Premkumar's mobile number - 94864 88386; he returned the call; a person, who attended the call, said "We have kidnapped your son and if a sum of Rs.1.50 crores is given, we

will release him"; since he did not know what to do, he disconnected the phone call; thereafter, when he tried to contact the said number again, the phone was switched off; so, he returned to Rajapalayam at 06.00 a.m., on 06.05.2013 and at 11.00 a.m., he went to the police station and lodged the complaint [EX-P1]; in the complaint, he did not refer to the demand of Rs.1.50 crores, because, the police told him that if he refers to it, the superior officers will trouble them and so, he gave the complaint only for "boy missing". However, Murugesan, Sub-Inspector of Police, [PW-26], who received the complaint [EX-P1] and registered the First Information Report [EX-P32] denied this assertion of Gajendra Raja [PW-1].

11 Mr.S.Hameed Ismail, learned counsel appearing for Sivaranjith [A-1] contended that Gajendra Raja [PW-1] is not an ordinary person; he owns a mill; he is into real estate business; he also owns agricultural lands and is also an income tax assessee; while that being so, had there really been a demand of ransom at 07.45 p.m., on 05.05.2013, as alleged, he would not have given a complaint of "boy missing" at 11.00 a.m, on 06.05.2013; he would have reached Rajapalayam immediately and informed the police that his son has been kidnapped for ransom and would have asked for tracing the

kidnappers with the help of the mobile phone tower location; to say that he went to the police station only at 11.00 a.m., on 06.05.2013 and gave the complaint, without mentioning about the demand of ransom appears extremely improbable; his explanation that the police told him not to refer to the demand of ransom in the complaint is equally fantabulous, especially, in the teeth of the categorical denial by Murugesan [PW-26], Sub Inspector of Police, who received the complaint and registered the case as “boy missing”.

12 The learned defence counsel further contended that even according to the case of the prosecution, Premkumar and the accused were friends and they were almost of the same age group; Premkumar was not a small boy; the photographs [MO-16 series] clearly show that he was tall and athletic in appearance; the postmortem report [EX-P3] also states “body of a well nourished male lying on his back”. Therefore, Mr. Hameed Ismail posed, “Will the accused kidnap their own friend for ransom and even before making a demand for ransom, murder him, bury him, burn his clothes and thereafter, late in the evening of 05.05.2013, call his father at 7.15 p.m. and demand Rs.1.50 crores as ransom without anything more?”

13 There appears to be much force in the submission of the learned counsel. We carefully analysed the evidence on record and found that in the complaint [EX-P1] given by Gajendra Raja [PW-1], there is absolutely no reference about the ransom of Rs. 1.50 crores. Had there been a demand of ransom, Gajendra Raja [PW-1], would have informed this immediately to his brother - Suriyanarayanan [PW-2] to alert the local police. Gajendra Raja [PW-1], in his examination-in-chief, has not stated that he informed his brother - Suriyanarayanan [PW-2] about this, whereas, Suriyanarayanan [PW-2] has stated that Gajendra Raja [PW-1] called him around 08.00 p.m., on 05.05.2013 and told him that there was demand of ransom. Had that been so, he need not have waited till the next day for Gajendra Raja [PW-1] to come and give the complaint at 11.00 a.m., and instead, he himself could have informed the police about the kidnapping of Premkumar and demand of ransom, so that effective steps could have been taken to identify the culprits. According to Gajendra Raja [PW-1], when he returned the call, the person, who attended the call, merely demanded Rs.1.50 crores for releasing Premkumar and he [PW-1] disconnected the phone call in tension. However, in the complaint [EX-P1] that was lodged on 06.05.2013, as stated above, there is no mention of he getting a missed call, he

returning the call and the demand of ransom by the person at the other end.

14 According to the preamble portion of the extra-judicial confession [EX-P11], Sivaranjith [A-1] had lost Rs.15,00,000/- in a bad deal and wanted to kidnap someone for ransom to become rich again. It is further recorded in the extra-judicial confession [EX-P11] that Premkumar was his friend. While that being so, what was the necessity for Sivaranjith [A-1] to use an almost extinct one rupee coin booth to call Premkumar for a drink? He could have easily called Premkumar from his mobile phone itself.

15 The next most important aspect is that if the accused had wanted to kidnap Premkumar for ransom, there would have been no necessity for them to intoxicate him with sleeping tablets and strangulate him to death and after almost 20 hours, contact his father - Gajendra Raja [PW-1] over phone and demand ransom. Even a novice would know that he will have to keep the victim alive during negotiations for ransom, because, he will be first required to convince the family of the victim that the victim is alive and will be released on payment of the ransom.

16 Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor, contended that the police have obtained the CDRs of the mobile phone of Premkumar, Gajendra Raja [PW-1] and Sakthikumar [A-2], vide EX-P33 to EX-P47, which show that a call has been made from the mobile phone of Gajendra Raja [PW-1] to Premkumar's mobile at 19.52 hours on 05.05.2013, vide [EX-P35]. A reading of EX-P35 shows that Gajendra Raja [PW-1] has spoken to his son-Premkumar in his mobile number, 94864 88386, for 76 seconds on 05.05.2013 at 19.52 hrs., which is 1 minute and 16 seconds. Even according to Gajendra Raja [PW-1], the person to whom he spoke, merely demanded Rs.1.50 crores as ransom, but, did not identify himself as Sakthikumar [A-2]. We carefully perused the CDRs [EX-P33 to EX-P47] and found that they have not been proved in a manner known to law and there appears to be signs of tampering, about which, we have alluded to in para 20, infra.

17 In our State, a procedure has been put in place for obtaining the CDRs by the police for the purpose of investigation, according to which, the Investigating Officer should make a request to the Cyber Cell Unit, attached to the Office of the Superintendent of Police by furnishing the mobile number for which the CDRs are

sought. On the approval of the Superintendent of Police, the Cyber Cell Unit would make a request to the Nodal Officer of the Service Provider. The Nodal Officer would send the CDRs in MS-Excel format to the Superintendent of Police, whose office, in turn, would forward it to the Investigating Officer. As and when the CDRs are required for the purpose of producing them in a Court of law, the Nodal Officer would normally give the CDRs containing the call details in PDF format with his certification, because, MS-Excel format can be tampered with. The Nodal Officer will be examined as a witness, through whom, the CDRs will be marked.

18 In this case, we are not advertent to the absence of certification under Section 65-B of the Indian Evidence Act, 1872, in Exs.P.33 to P.47 because, that, by itself, is a separate subject. In this case, the photocopies of the CDRs [EX-P33 to EX-P47] have been marked through Thangagurunathan, Sub-Inspector of Police, [PW-27], Cyber Cell Unit, attached to the Office of the Superintendent of Police. Photocopies are secondary evidence of the contents of the original. For a party to lead secondary evidence, the absence of the original must be accounted for and the conditions set out in Section 65 of the Evidence Act must also be satisfied. In the case at hand, we

find that Section 65, *ibid*, has been observed only in its breach. Consequently, in the light of the judgment of the Supreme Court in **J.Yasodha vs. K.Shobha Rani**², these documents could never have been received in evidence. In his evidence, Thangagurunathan, Sub-Inspector of Police, [PW-27], has stated that at the request of the Inspector of Police, Rajapalayam Police Station, he conducted investigation and ascertained from the Service Providers about the names of the subscribers of the mobile phones in question and also obtained the call details records. Thangagurunathan [PW-27] had assisted the Investigating Officer to collect the evidence, which he is legally bound to, because, as a police officer, he has all the powers under Chapter XII Cr.P.C. and in exercise of these powers, he is perfectly justified in collecting the evidence from the Service Provider and submitting the same to the Investigating Officer. In other words, as Sub Inspector of Police attached to the Cyber Cell, Thangagurunathan [PW-27] has the power under Sections 160, 161 and 162 Cr.P.C. to call for information from anyone, including Mobile Service Providers. That apart, under Section 69 of the Information Technology Act, a duty is cast upon the Mobile Service Providers to give the required information to the police. If an ordinary person were to ask for the CDRs containing call details of another, the

2 (2007) 5 SCC 730

Service Provider is not bound to furnish the same. But, when the police requisition this information, they are bound to furnish the same. Since every police officer has a statutory power to investigate a crime, the information of call details in CDR form has to be furnished by the Service Provider on demand. So far so good. But, the materials so collected should have to be translated into legal evidence in a Court of law, because, the result of investigation of a Police Officer is not legal evidence, [See **Vijender vs. State**³].

19 To expatiate this further, in a murder case, the Investigating Officer would request the police Surgeon to conduct postmortem and collect the postmortem report. The postmortem report will have to be proved by examining the autopsy Surgeon or someone who had assisted him during autopsy. However, the Investigating Officer cannot mark the postmortem report and prove it in his evidence. Such a privilege is available only in respect of certain documents referred to in Sections 292, 293 and 294 Cr.P.C. The CDRs do not fall within this category.

20 We carefully examined the CDRs (Exs.P.33 to P.47]. They are photocopies and Gandhi [PW-33], Inspector of Police has certified

³ (1997) 6 SCC 171

them as true copy with his office seal and signature. In Ex.P.36, we have the call details upto 11.05.2013 and thereafter, there is a break and the next entry is only on 15.05.2013. There is no explanation for the gap. The CDRs merely show the mobile numbers and there is no reference to the name of the subscriber in any of them. Of course, the police have written by hand the names, Premkumar, Gajendran (father) and Sakthikumar [A-2] at the top, perhaps, for their easy identification. But, that cannot lead us to infer that the said mobiles belong to Sakthikumar [A-2] without anything more. Therefore, if we read the evidence of Thangagurunathan [PW-27], Sub Inspector of Police attached to the Cyber Unit, it is clear that he received a request from the Inspector of Police, Rajapalayam, for collecting the CDRs of some phone numbers and after obtaining the permission of the Superintendent of Police, he obtained the CDRs of the mobile numbers 94864 88386 (mobile number of Premkumar) and 98429 91173 (mobile number of P.W.1) for the period from 01.05.2013 to 05.05.2013. They were marked as Ex.P.33 and Ex.P.34. It may be recollected that in the compliant [EX-P1], Gajendra Raja [PW-1] has given two mobile numbers of his son Premkumar, viz., 94864 88386 and 86084 84852. We asked the learned Additional Public Prosecutor and Gandhi [PW-33], who was present in the Court as to why

requisition for CDRs was given only for 94864 88386 and not for 86084 84852 and that too, only for the period from 01.05.2013 to 05.05.2013. There was no satisfactory answer for that. According to the police, Gajendra Raja [PW-1] gave the complaint on 06.05.2013 stating that his son Premkumar went missing from 04.05.2013 evening and his two mobile numbers were given. On receipt of the complaint, the first thing any policeman would have done was to give these two numbers to the Cyber Unit to trace the tower location and to obtain the up-to-date CDRs. Whereas, the request is strangely qua CDRs only for the period from 01.05.2013 to 05.05.2013. Another factor is that there is no material to show as to when Gandhi [PW-33] gave the requisition to the Cyber Unit. Was it immediately on 06.05.2013 or after 14.05.2013? Had the Investigating Officer produced the requisition, we would have unhesitatingly admitted it as additional evidence under Section 391 Cr.P.C. However, the learned Additional Public Prosecutor wanted us to look into the entry [EX-P35] which shows that a call has been made from 98429 91173 (mobile of P.W.1] to the mobile number 94864 88386 (mobile of Premkumar] on 05.05.2013 at 19.15.37 hrs. and the conversation was for 76 seconds. Based on this entry, he wants us to infer that, after murdering Premkumar on 04.05.2013, Sakthikumar [A-2] gave a missed call to

Gajendra Raja [PW-1] from the mobile of Premkumar, on seeing which, Gajendra Raja [PW-1] returned the call on 05.05.2013 at 19.15.37 hrs. and Sakthikumar [A-2] demanded Rs.1.50 crores as ransom even without disclosing his name. We would have persuaded ourselves to believe even this far-fetched story woven by the prosecution, if not for the categorical assertion of Gajendra Raja [PW-1] in his complaint [EX-P1] that he was continuously trying to contact Premkumar in his two mobiles and both the phones were switched off.

21 Now, to continue with narration of the evidence of Thangagurunathan [PW-27], as stated above, he has simply stated that he obtained the CDRs and found that 94864 88386 stands in the name of Gajendra Raja [PW-1], 82205 70123 stands in the name of Sakthikumar [A-2], 99448 69869 stands in the name of Thangalakshmi and the address of Sakthikumar [A-2] and Thangalakshmi is one and the same; a call at this time has gone from this mobile to that mobile, etc. The defence has objected to the marking of Ex.P.38 and Ex.P.39. Strangely, the subscriber application form which will contain the photograph of the subscriber and which will be available with the Service Provider has not even been

obtained. To cap it all, there are absolutely no CDRs of the mobile phone of Sivaranjith [A-1]. Is it the prosecution case that when the whole world had mobile phones in 2013, Sivaranjith [A-1] did not have one? Therefore, for the reasons set out above, we cannot place any reliance on the results of investigation qua CDRs given by Thangagurunathan [PW-27] in his evidence nor can we rely upon the CDRs, Ex.P.33 to P.47, (even without going into the absence of the certification under Section 65-B of the Evidence Act) to draw an inference that after murdering Premkumar, Sakthikumar [A-2] was using his mobile phone to demand ransom from Gajendra Raja [PW-1] and that he was speaking to all and sundry.

22 We did not want the accused to take advantage of the remissness on the part of the Investigating Officer in properly collecting the CDRs and for the failure of the prosecution in translating it into legal evidence, we were ready to afford an opportunity to the prosecution to adduce additional evidence on this aspect under Section 391 Cr.P.C. Therefore, we asked Gandhi [PW-33], Inspector of Police, who was present in the Court as to in which format, the CDRs were received from the Service Providers, for which, he replied that the Cyber Unit had supplied them the CDRs in

MS-Excel format. We further asked him that when he had attested the CDRs (Exs.P.33 to P.47] as true copies, he must be having their originals in the case diary. We also told him that if he has the PDF format of the CDRs with him in the case diary, we can summon the Nodal Officer for proving the same. Gandhi [PW-33] replied that the CDRs are not available in the case diary, since the occurrence had taken place in the year 2013. Therefore, we are rendered helpless and hence, constrained to hold that the photocopies of the MS-Excel format of the CDRs (Exs.P.33 to P.47), have not been proved in a manner known to law.

23 It is trite that, though an extra-judicial confession is a weak piece of evidence, a conviction can be based on it, if it is found to be voluntary and truthful. Now, it may be necessary to recapitulate the prosecution case as built up by them based on the extra-judicial confession [EX-P11] given by the accused to Arivazhagan [PW-22], V.A.O.

24 In the extra-judicial confession [EX-P11], it is stated that Sivaranjith [A-1] contacted Premkumar from an one rupee Public Call Office booth and asked him to come for a drink; acting on this

request, Premkumar came in a Hero Honda Splendor Plus motorbike bearing Regn. No.TN 67 J 7130; he [A-1] took his Apache motorbike bearing Regn. No. TN 67 AQ 5315 and picked up Sakthikumar [A-2] at Thendral Nagar; they went to the terrace of Councillor Nagaraj's house and consumed liquor; they mixed sleeping tablets in Premkumar's drink and within a short while, Premkumar fainted; they both left Premkumar in the terrace and went to Srirangapalayam Railway Gate and brought a Maruti Omni van bearing Regn. No. TN 67 S 7413 to Councillor Nagaraj's house; there, they bundled Premkumar into the Maruti Omni van.

25 The prosecution has examined one Krishnaswamy [PW-8], who has stated that he knows the accused and Premkumar; on 04.05.2013, around 11.00 p.m., while he was passing by Councillor Nagaraj's house, he saw four or five persons standing there; the accused were also there; when he asked them as to why they were standing, the accused told him that Premkumar had passed out temporarily from excessive drinking and that they were carrying him to his house; on 15.05.2013, around 2.00 p.m., while he was coming near Councillor Nagaraj's house, he saw the police with the accused and learnt that the accused had murdered Premkumar. He identified

the Hero Honda Splendor Plus motorbike [MO-5], Apache motorbike [MO-7] and Maruti Omni van [MO-8] as the vehicles which were there on 04.05.2013 when he saw the accused with Premkumar. This witness was neither declared hostile nor was any question put to him in re-examination for clarification. In the absence of either, his evidence that on 15.05.2013, he saw the accused in the company of the police at Councillor Nagaraj's house completely shakes the extra-judicial confession [EX-P11] which is said to have been given on 17.05.2013 by the accused to Arivazhagan [PW-22], V.A.O.

26 In the Section 313 Cr.P.C. examination, Sivaranjith [A-1] has stated that since Premkumar's body was discovered in the plot belonging to his [A1's] father, he was taken into custody on 14.05.2013 illegally and the police prepared a case of "kidnapping for ransom and murder". Thus, in our opinion, the evidence of Krishnaswamy [PW-8] has caused a serious dent in the voluntariness of the extra-judicial confession [EX-P11] and if it is read with the explanation given by Sivaranjith [A-1] in the Section 313 Cr.P.C. examination alluded to above, it can safely be concluded that the extra-judicial confession has failed the first test of voluntariness.

27 Now, coming to the second test of truthfulness, we noticed the following disquieting features:

a When the alleged motive was to kidnap Premkumar for ransom, what was the necessity to murder him by strangulation on the night of 04.05.2013 and demand ransom of Rs.1.50 crores from Gajendra Raja [PW-1] at 7.15 p.m. on 05.05.2013?

b Assuming for a moment that the accused had rendered Premkumar unconscious by mixing a huge dose of sleeping pills with liquor, on account of which, Premkumar fainted, they would have used that situation to demand a ransom.

c After having administered sleeping pills with liquor to temporarily immobilise Premkumar, who unfortunately died, the accused would have buried Premkumar quietly. Where is the necessity for them to strangle Premkumar and kill him when he had already fainted?

d Sivaranjith [A-1] has not stated in the confession statement [EX-P11] that Premkumar suddenly got up from slumber

and therefore, they had to kill him. Instead, it is stated in the extra-judicial confession [EX-P11] that Premkumar had already fainted in Councillor Nagaraj's house and they carried him all the way to the SIDCO Industrial Estate, strangulated him with a wire, murdered him, stripped of his clothes, buried him and thereafter, burnt his clothes near Kothai Nachiyarpuram.

28 We perused the photographs [MO-16 series] which show that Premkumar was wearing only an underwear. In our view, the police had found out the body much before 18.05.2013 and after finding Premkumar only with an underwear, the story that Sivaranjith [A-1] and Sakthikumar [A-2] stripped him of his clothes, took his clothes to Kothai Nachiarapuram and burnt them at 3.30 a.m. on 05.05.2013 has been concocted.

29 According to the extra-judicial confession [EX-P11], Premkumar came by his Hero Honda Splendor Plus motorbike bearing Regn. No. TN 67 J 7130 to Councillor Nagaraj's house for consuming liquor; after Premkumar had swooned, Sivaranjith [A-1] and Sakthikumar [A-2] went by Sivaranjith's [A-1's] Apache motorbike to Srirangapalayam Railway Gate, from where, Sivaranjith [A-1] brought

his Maruti Omni van to Councillor Nagaraj's house; they bundled Premkumar into the Maruti Omni van and took him to the SIDCO Industrial Estate and murdered him; after burning his clothes near Kothai Nachiarpuram, Sakthikumar [A-2] took the Apache motorbike and went to Srirangapalayam Railway Gate and he was followed by Sivaranjith [A-1] in the Maruti Omni van; Sivaranjith [A-1] parked the Maruti Omni van near Srirangapalayam Railway Gate and came in the Apache motorbike along with Sakthikumar [A-2] to Councillor Nagaraj's house; then, Sivaranjith [A-1] took Premkumar's bike and left it near Chevakkadu in Thendral Nagar; then, again, on 05.05.2013, at 7.00 a.m., both of them came to Chevakkadu in Thendral Nagar and did not find Premkumar's motorbike.

30 Had the prosecution stopped its case at that, then, we can draw an inference that someone had stolen Premkumar's motorbike from Chevakkadu area. However, the Investigating Officer has stated that after the accused were taken into judicial custody on 18.05.2013, he once again took them into judicial custody on 03.06.2013, *i.e.*, on the last day of the 15 days period of initial remand and interrogated the accused and recorded their confession statements, the admissible portion of which, was marked as Ex.P.23; based on the disclosure

statement of Sivaranjith [A-1], he recovered a Hero Honda Splendor Plus motorbike from behind Rajapalayam Taluk Office in the presence of Arivazhagan [PW-22], the same Village Administrative Officer who had recorded the extra-judicial confession [EX-P11] and Veeraputhran, Village Assistant [not examined] under the cover of mahazar [EX-P26]. From a perusal of mahazar [EX-P26], it is seen that the registration number of the Hero Honda Splendor Plus motorbike is TN 67 J 7913. Only this motorbike has been marked as M.O.5. Whereas, the extra-judicial confession [EX-P11] clearly states that Premkumar came by Hero Honda Splendor Plus motorbike bearing Regn. No.TN 67 J 7130.

31 The learned Additional Public Prosecutor contended that there is not much difference between the Registration Nos.TN 67 J 7130 and TN 67 J 7913 and Premkumar's father Gajendra Raja [PW-1] has stated that the motorbike bearing Regn. No. TN 67 J 7913 belongs to his son. We are unable to countenance this vain argument of the learned Additional Public Prosecutor, because, nobody would have wanted Sivaranjith [A-1] to state in the extra-judicial confession about Premkumar's correct motorbike number. Had Sivaranjith [A-1] merely stated that Premkumar came by a motorbike, that would have

been sufficient. Whereas, in the extra-judicial confession [EX-P11], it is recorded that Premkumar came by Hero Honda Splendor Plus bearing Regn. No.TN 67 J 7130. In the same confession statement, it is also recorded that after the murder, they abandoned the Hero Hondo Splendor Plus motorbike near Chevakkadu in Thendral Nagar. It is further stated in the extra-judicial confession [EX-P11] that, again, they came to Chevakkadu in Thendral Nagar on 05.05.2013 in search of Premkumar's motorbike, but, did not find it. Then, how is it that suddenly when the accused were taken into police custody on 03.06.2013, they confessed that the vehicle was kept behind Rajapalayam Taluk Office? The seized vehicle bears the Regn. No. TN 67 J 7913 and that has been marked as M.O.5. The best way to prove the ownership of the motorbike is to mark its R.C. book, which has not been done in this case.

32 While we were perusing the records, we noticed that the accused herein were shown as accused in two other cases. This aroused our inquisitiveness. On further scrutiny of the records, we found that a case in Rajapalayam North P.S. Cr.No.343 of 2013 under Section 397 IPC and a case in Keelarajakularaman P.S. Cr. No.153 of 2013 under Section 392 IPC were registered against the accused.

Both these police stations are within Rajapalayam Municipality. Therefore, we summoned M. Thinakaran, Inspector of Police, Rajapalayam North P.S. who was the Investigating Officer in Cr.No. 343 of 2013 and examined him under Section 391 Cr.P.C. as C.W.1. The certified copy of the complaint and the FIR in Rajapalayam North P.S. Cr.No.343 of 2013 was marked as Ex.C.1 and the certified copy of the charge sheet was marked as Ex.C.2 series.

33 From a perusal of the evidence of Thinakaran (C.W.1) and also Exs. C.1 and C.2 series, it is seen that one Karthik, S/o Sivan gave a complaint that on 16.05.2013 at 8.30 p.m., Sivaranjith [A-1] and Sakthikumar [A-2] robbed him of Rs.250/- and sped away in a motorbike. Thinakaran (C.W.1) has further stated that Sivaranjith [A-1] and Sakthikumar [A-2] mentioned in the said FIR are the accused in this murder case.

34 As regards Keelarajakularaman P.S. Cr. No.153 of 2013, the learned Additional Public Prosecutor fairly conceded that on the complaint given by one Thaniaraj that on 16.05.2013, at 12.30 hrs., Sivaranjith [A-1] and Sakthikumar [A-2] brandished a knife and robbed him of Rs.500/-, the said case was registered. He also

conceded that the accused in that crime number are the accused in this murder case. He further stated that trial was conducted in C.C.No.260 of 2014 and the Judicial Magistrate, Rajapalayam, has acquitted the accused on 19.10.2016. The certified copy of the judgment and order of acquittal in C.C. No.260 of 2014 dated 19.10.2016 was marked as Ex.C.3.

35 We are aware that we cannot make any comment or give a finding with regard to the said two cases. Thus, from Exs.C.1 to C.3 and the evidence of Thinakaran (C.W.1), it is seen that the accused were allegedly involved in two robberies on 16.05.2013, viz., one at 12.30 p.m. and the other at 8.30 p.m. However, in the extra-judicial confession [EX-P11] which was allegedly recorded on 17.05.2013, there is absolutely no reference to these two robberies. The learned Additional Public Prosecutor contended that perhaps, the accused wanted to confess only the heinous crime of murder and did not want to confess the simple crimes of robbery. Even if we were to accept this submission of the learned Additional Public Prosecutor, we find that in the police confession that was recorded by Gandhi [PW-33] on 17.05.2013, there is a reference to these two robberies. It may be pertinent to state here that for the robberies which have taken place

on 16.05.2013, the FIRs have been registered only on 17.05.2013 by those two police stations. Be it noted that a confession is acted upon by the Courts because it presupposes that the offender wants to unburden himself of his feeling of guilt out of penitence. To say that, they were selectively remorseful by confessing only to the murder which they had allegedly committed on 04.05.2013 and not to the robberies which were allegedly committed by them on 16.05.2013 [a day before giving the confession] defies credulity.

36 As alluded to above, Arivazhagan [PW-22] and Gandhi [PW-33], Inspector of Police, have stated that though the accused were arrested on 17.05.2013 by 6.00 p.m., they did not proceed to the place where the body was allegedly buried, because, dusk had fallen. The observation mahazar [EX-P15] shows that the police station was only 7 kms. away from where the body was exhumed. As stated above, it is common knowledge that in the month of May, Rajapalayam will have sunset only after 6.45 p.m. Whereas, on the basis of the extra-judicial confession [EX-P11], Gandhi [PW-33] prepared the alteration report [EX-P40] altering the case from one of "boy missing" to a case of "kidnapping for ransom and murder" and has sent the alteration report [EX-P40] to the Magistrate on 17.05.2013 itself. In the case at

hand, on digging the place, if the police had not found the body on 18.05.2013, they would have had to cut a sorry figure. All these cast a serious doubt in our mind that the police had discovered the body much earlier and to give legitimacy to the investigation, they have taken Dhanalakshmi [PW-4], Tahsildar on 18.05.2013 and had made it appear to her as if the body was being exhumed for the first time in her presence.

Councillor Nagaraj's house:

37 It is the case of the prosecution that the accused took Premkumar to the terrace of Councillor Nagaraj's house on the night of 04.05.2013, where, they administered liquor with sleeping pills to Premkumar and he swooned there. It is the further case of the prosecution that after the arrest of the accused on 17.05.2013, the police took them to the terrace of Councillor Nagaraj's house, from where, they recovered one empty brandy bottle [MO-10], one beer bottle [MO-11] and one McDowell brandy bottle with 50 ml. brandy [MO-12] under the cover of mahazar [EX-P20] in the presence of witnesses Arivazhagan [PW-22] and Veeraputhran (not examined). The prosecution's further case is that Muruganandham [PW-13], Inspector of Police, Finger Print Bureau, lifted chance finger prints

from the beer bottle [MO-11], which tallied with those of Sivaranjith [A-1] and chance finger prints from the brandy bottle [MO-12], which tallied with those of Sakthikumar [A-2]. The finger print report was marked as Ex.P.5.

38 It is pertinent to state here that after the arrest of the accused, the alleged recoveries of beer and brandy bottles were made by the police and on the same day, Muruganandham [PW-13], Inspector of Police, Finger Print Bureau, lifted finger prints from the bottles and the Investigating Officer took finger prints of the accused. Normally, chance finger prints of unknown accused will be lifted from the place of occurrence and after the accused is arrested, his finger prints will be taken by the Investigating Officer and sent to the Finger Print Bureau, where, comparison will be done and report given.

39 In this case, according to the police, the accused were arrested on 17.05.2013, on their disclosure, recovery of the empty bottles was effected on 18.05.2013 and thereafter, chance finger prints and finger prints of the accused were lifted, compared and report [EX-P5] given. Though this may look a little odd, yet, we should not look at every act of the police with jaundiced eyes. The

finger print comparison report [EX-P5] merely states that the chance finger prints marked as M1, M2 and M3 are found identical with left middle, left ring and left little finger prints respectively of 1 FP slip of Sivaranjith [A-1], S/o Balakrishnan and the chance finger prints marked as M4 and M5 are found identical with left thumb impression and right index finger prints respectively of 1 FP slip of Sakthikumar [A-2]. Neither in the evidence of Muruganandham [PW-13] nor in his finger print comparison report [EX-P5], he has given reasons for arriving at the said conclusion. Interestingly, according to the seizure mahazar, these liquor bottles were seized at 14.00 hrs. on 18.05.2013 pursuant to the disclosure statement of the accused and on the accused taking the police and showing them the terrace of Councillor Nagaraj's house, from where, the bottles were said to have been recovered. Whereas, Muruganandham [PW-13] has stated that on 18.05.2013 at 8.00 a.m., he went to the terrace of Councillor Nagaraj's house and lifted the finger prints from the empty liquor bottles found there. We are unable to reconcile these two incompatible versions. *(emphasis supplied)*

40 Councillor Nagaraj was alive on 18.05.2013 and his Section 161(3) Cr.P.C. statement has also been recorded. When the

recovery has been effected from the terrace of his house, it is indeed strange that he has not signed in the recovery mahazar [EX-P20]. Mr.Hameed Ismail, learned counsel for Sivaranjith [A-1] submitted that according to the prosecution, the accused and the deceased had used the terrace of Councillor Nagaraj's house for drinking liquor; it is not the case of the prosecution that Councillor Nagaraj had permitted them to use his terrace for having liquor; therefore, without the permission of Nagaraj who is a local Councillor, would anyone dare to go to his terrace to consume liquor?

41 Refuting this contention, the learned Additional Public Prosecutor submitted that Councillor Nagaraj's house is an independent house and the staircase to the terrace is outside and is accessible for anyone and everyone; that apart, the widow of Councillor Nagaraj, viz., Vijayalakshmi [PW-14] has stated that their house was not given on rent to anybody and it was vacant; therefore, the accused would have taken advantage of this fact and would have used the terrace of Councillor Nagaraj's house for consuming liquor.

42 Initially, the aforesaid explanation offered by the learned Additional Public prosecutor did sound appealing to us. However, on a

perusal of the photographs of Councillor Nagaraj's house, we find that it is a posh house in a residential locality with strong iron gates. It is true that Councillor Nagaraj was alive when the occurrence took place and his death certificate produced by the learned Additional Public Prosecutor shows that he died on 27.07.2013. Therefore, the prosecution has examined his wife Vijayalakshmi [PW-14], who, in her evidence, has stated that the house in Thendral Nagar belongs to them and they had not let it out for rent to anybody during the year 2013. The photographs of her house were marked as M.O.13 series. She has further stated in the chief-examination that later, she learnt that some persons had used the terrace of her house for drinking liquor and those persons are involved in a murder case. In the cross-examination, she has admitted that there are several houses next to her house and she had not received any complaint from her neighbours that unauthorised persons were using her house terrace for illegal purpose. She has further explained it by saying that no such misuse of the terrace of her house had ever occurred.

43 The prosecution has not adduced any evidence to show that either the accused or some other persons had used Councillor Nagaraj's house terrace for such activities. If we were to believe the

prosecution version, it means that for the first and the last time, Councillor Nagaraj's house terrace was used by the accused to consume liquor. Admittedly, Nagaraj was Councillor in Rajapalayam Municipality at the relevant point of time. Would anyone not acquainted with him and unknown to him have dared to use his house terrace to consume liquor without his knowledge?

44 In order to satisfy ourselves about the topography of Councillor Nagaraj's house, exercising powers under Section 310 Cr.P.C., we made a spot inspection along with the police, learned Additional Public Prosecutors and the learned defence counsel to Councillor Nagaraj's house on 02.04.2019 (Tuesday). We had with us photographs in M.O.13 series with us. We found terrace houses on either side of Councillor Nagaraj's house. The parapet wall of the terrace of Councillor Nagaraj's house was only about 2 ½ feet. Anyone sitting and consuming liquor in his house terrace could be easily seen by the neighbours. As already stated, the house has solid iron gates and it is not in a dilapidated condition which could be easily used for shady purposes.

45 The case of the prosecution is that the accused and Premkumar came to Councillor Nagaraj's house, had liquor there, Premkumar fainted, the accused went and brought the Maruti Omni van, the accused transferred Premkumar into the Maruti Omni van, took him to the plot of Sivaranjith's [A1's] father at SIDCO Industrial Estate, murdered and buried him there, burnt his clothes, came back to Councillor Nagaraj's house, took Premkumar's motorbike and parked it in Chevakkadu in Thendral Nagar and thereafter, went home.

46 It is noteworthy that the staircase leading to the terrace of Councillor Nagaraj's house is on the side of the house and it is not a duplex house to have staircase leading to terrace inside the house itself. If two persons were to carry Premkumar from the terrace of Councillor Nagaraj's house to Maruti Omni van, the chance of the same not being noticed by neighbours is very remote.

47 Lastly, the learned Additional Public Prosecutor contended that even if the Court disbelieves all the above evidence, yet, based on the police confession which led to the recovery of the dead body of Premkumar on 18.05.2013, this Court should sustain the conviction by

invoking the burden under Section 106 of the Evidence Act. In support of this contention, he placed strong reliance on the judgment of the Supreme Court in **State of Maharashtra vs. Suresh**⁴.

48 As alluded to above, Sivaranjith [A-1], in his Section 313 Cr.P.C. statement, has not disputed the recovery of the dead body from the plot of his father at the SIDCO Industrial Estate. It is his contention that he has been falsely implicated in this case by the mere fact that the body was recovered from his father's plot. Dhanalakshmi [PW-4], Tahsildar, in her cross-examination and also other witnesses, including the Investigating Officer, have admitted that the body was recovered from an open and semi-constructed shed. The photographs in M.O.16 series show that the body was recovered from a place, around which, there are four semi-finished and unplastered walls with gaping holes on walls, perhaps, for providing windows, and open to sky. In order to satisfy our judicial conscience, in the course of our local inspection under Section 310 Cr.P.C. as alluded to in paragraph no.44 above, we visited the place from where the body was exhumed. Nothing significant appears to have changed in that place except the fact that an asbestos roof has come up above. That place is located

4 (2000) 1 SCC 471

there are very few active companies. There are graves on the main road leading to the place. The industrial plot from where the body was recovered, has walls on four sides which remain still unplastered. In the photographs [MO-16 series], the roof was open to the sky. Now, the roof is covered by an asbestos sheet. The spot is isolated from the main building and is freely accessible to anyone from the eastern side. Local enquires made by us show that after the incident, a fence has been put on the eastern side and before that, there was no such fence. The fence also does not sport an old look and it appears relatively new. From the road on the eastern side, anyone could bring a vehicle upto the place from where the body was recovered.

49 During the course of arguments, Mr. Hameed Ismail, learned counsel for Sivaranjith [A-1] posed a pertinent question. He submitted that if the accused had committed the murder, they could have easily disposed of the body anywhere near the hillock. He supplemented this submission by posing, "Will anyone bury a dead body in his own property when there are so many places around the hillock, especially when the construction work in the plot had only begun and during the progress of the work, it is all the more probable that the construction workers may find it out while taking up the

flooring work? There is no good reason for them to bring it to the plot of Sivaranjith's [A-1's] father in the SIDCO Industrial Estate and bury the body there.” Rebutting the said contention of Mr. Hameed Ismail, the learned Additional Public Prosecutor submitted that instead of burying the body elsewhere and getting caught, the accused would have thought it safer to bury the body in the plot of Sivaranjith's [A-1's] father, which will go unnoticed. We find both arguments to be plausible. However, after conducting spot inspection, we are convinced that the place from where the body was recovered cannot be said to be inaccessible to others.

50 The learned Additional Public Prosecutor contended that even if this Court jettisons the extra-judicial confession [EX-P11], the conviction can be based on the police confession leading to recovery of the dead body. To rebut this contention, Mr. Hameed Ismail took us through the admissible portion of the police confession [EX-P22] of Sivaranjith [A-1] and submitted that according to the police, Sivaranjith [A-1] was arrested on 17.05.2013 and his confession was recorded on the same day, whereas, Ex.P.22 shows that the Inspector of Police and Arivazhagan [PW-22] have signed the confession only on 18.05.2013. In this regard, the defence have put a question to

Arivazhagan [PW-22] in the cross-examination and he has admitted that he has signed it on 18.05.2013. The Investigating Officer has tried to explain it by saying that it was by mistake. But, how could two persons commit the same mistake is the question, for which, there is no answer. That apart, in the cross-examination of Arivazhagan [PW-22], he has been confronted with his Section 161(3) Cr.P.C. statement, wherein, it is stated that he handed over the accused to the police at 16.30 hrs. on 14.05.2013. For this, Arivazhagan [PW-22] has stated that an error would have crept in while writing. The same question has been put to Gandhi [PW-33] who has accepted that Arivazhagan [PW-22] told him that the accused were produced before the police on 14.05.2013, but, tried to explain it by saying that it was due to a mistake in pronunciation of the date. The Section 161(3) Cr.P.C. statement is in Tamil. The pronunciation of 14 is totally different from the pronunciation of 17 in Tamil and so, we are unable to appreciate this explanation of Gandhi (P.W.33), Investigating Officer.

51 The learned Additional Public Prosecutor contended that the SIDCO Industrial Estate is not accessible to everybody as there are Watchmen posted there. Ramakrishnan [PW-18], Watchman of

SIDCO Industrial Estate, in the chief-examination, has stated that he was working as Watchman in the SIDCO Industrial Estate and his duty hours are from 9.00 a.m. to 5.30 p.m. and that there was no night shift. Thus, even according to the prosecution, no Watchman was posted in the place after dusk. As observed by us, the place is isolated with low inhabitation and it is also easily accessible to anyone. Under such circumstances, with so many flaws in the case of the prosecution, as catalogued above, it will be unsafe to shift the burden under Section 106 of the Evidence Act on Sivaranjith [A-1] and mulct criminal liability on him.

Arivazhagan [PW-22]:

52 The *dramatis personae* in the prosecution narrative is Arivazhagan [PW-22], V.A.O., whom, we find, has worked as the lieutenant of Gandhi [PW-33], Inspector of Police. We are fortified in commenting so, because, according to the prosecution, the breakthrough came with the appearance of the accused before Arivazhagan [PW-22] on 17.05.2013 and giving the extra-judicial confession [EX-P11]. After recording the extra-judicial confession [EX-P11], Arivazhagan handed over the accused to Gandhi [PW-33], Inspector of Police, who recorded the police confession of the

accused, which has been attested by Arivazhagan [PW-22]. On 18.05.2013, Arivazhagan [PW-22] is said to have accompanied the accused and the police to S.R. Process, from where, the body was recovered and his signature finds place in the recovery mahazar [EX-P16]. However, Dhanalakshmi [PW-4], Tahsildar, under whom, Arivazhagan [PW-22] worked, has clearly stated in her evidence that Arivazhagan [PW-22] was not there on 18.05.2013 at the time when the body was exhumed and that he came only at 11.30 a.m. Arivazhagan [PW-22] accompanied Gandhi [PW-33] to Kothai Nachiyarpuram, from where, a cable wire and burnt remnants of Premkumar's clothes are said to have been recovered at 12 noon under mahazar [EX-P18]. From there, he accompanied the police to the house of Sivaranjith [A-1] from where, the Apache motorbike bearing Regn. No.TN 67 AQ 5315 [MO-7], Maruti Omni van bearing Regn. No. TN 67 S 7413 (M.O.8) and a Samsung mobile phone were recovered at 12.30 p.m. under the cover of mahazar [EX-P19]. From the said place, he accompanied the Investigating Officer to the house of Sakthikumar [A-2], from where, three mobile phones [M.Os.3,31 and 32] and one knife [MO-34] measuring 22.50 cms. were recovered at 01.15 p.m. on 18.05.2013 under cover of mahazar [EX-P21]. From there, Arivazhagan [PW-22] accompanied the Investigating Officer to

the house of Councillor Nagaraj, from where, empty beer and brandy bottles were recovered at 2.00 p.m. on 18.05.2013 under the cover of mahazar [EX-P20].

53 Though no knife was used in the commission of offence, yet, Gandhi [PW-33], Inspector of Police, has effected recovery of a knife qua two robbery cases, viz., Rajapalayam North P.S. Cr.No.343 of 2013 under Section 397 IPC and Keelarajakularaman P.S. Cr. No. 153 of 2013 under Section 392 IPC and Arivazhagan [PW-22] was cited as witness in those two cases as well! After the accused were remanded to custody on 18.05.2013, they were taken into police custody on 03.06.2013 for effecting certain recoveries. For those recoveries also, Arivazhagan [PW-22] was the witness, as could be seen from the seizure mahazar [EX-P25], under which, Gandhi [PW-33], Inspector of Police, recovered a knife measuring 22.50 cms. on 03.06.2013 at 5.30 p.m. from a bush on the disclosure of Sivaranjith [A-1]. On the same day, Arivazhagan [PW-22] accompanied Gandhi [PW-33] and recovered Hero Honda Splendor Plus motorbike bearing Regn No.TN 67 J 7913 [MO-5] from behind Rajayapalayam Taluk Office on the disclosure of Sakthikumar [A-2] at 6.00 p.m. When so pivotal is the role of Arivazhagan [PW-22] in the investigation of

this case, can we place reliance on the extra-judicial confession [EX-P11] that is said to have been given to him by the accused? Our judicial conscience does not permit us to pursue this course.

54 Now, we will deal with the evidence of the witnesses who have said that they had seen the accused and the deceased together.

54.1 Kumaraswamy [PW-7] has, in his evidence, stated that he is a distant relative of the accused; on 04.05.2013, around 9.00 p.m, he saw the accused and Premkumar going in two motorbikes; he stopped Premkumar and asked him as to where he was going, for which, Premkumar replied that he was going with the accused for dinner; two days later, he learnt that Premkumar had gone missing; he also learnt that a police complaint has been given in this regard; he met Sivaranjith [A-1] and asked him as to where Premkumar is, for which, he replied that he is also in search of him and so, he [PW-7] left it at that; on 18.05.2013, he heard that Premkumar's body has been recovered from S.R. Process' plot and so, he went there and he was taken as a panchayatdar for the inquest by the police. In the cross-examination, he has admitted that Premkumar is also distantly related to him. In that case, when he knows that a police case has been registered in connection with missing of Premkumar, he has not

informed this to anyone and his statement has been recorded only on 18.05.2013 and the same has also reached the Court only on 21.06.2013.

54.2 Krishnaswamy [PW-8] has stated in his evidence that he is working as Gardener in the farm of one Kuwait Raja; the accused and Premkumar were friends; on 04.05.2013, around 11.00 p.m., when he went near Councillor Nagaraj's house, he saw a Maruti Omni van and four or five persons standing; he also saw the accused with Premkumar; when he enquired the accused, they told him that Premkumar had drunk excessively and so, they are dropping him back home. If this testimony is believed, then, it means that the accused were not alone and there were four or five others with them near Councillor Nagaraj's house at 11.00 p.m. on 04.05.2013. After going for spot inspection to Councillor Nagaraj's house on 02.04.2019, we are unable to persuade ourselves to believe the prosecution story that the accused took Premkumar to the terrace of Councillor Nagaraj's house, gave him liquor mixed with sleeping tablets, left him there, went to Srirangapalayam Railway Gate, fetched Maruti Omni van from there to Councillor Nagaraj's house, brought Premkumar from the terrace and bundled him into Maruti Omni van. In the cross-

examination, he [PW-8] has admitted that his employer Kuwait Raja and Gajendra Raja [PW-1] are close relatives. From the evidence of witnesses, it is apparent that after 06.05.2013, the news of the missing of the local industrialist's son Premkumar was the talk of the town. While that being so, it is quite strange that Krishnaswamy [PW-8] did not inform even his employer Kuwait Raja that he had seen the accused along with four or five others with Premkumar, who was in an inebriated condition at 11.00 p.m. on 04.05.2013. His statement was recorded only on 18.05.2013 and it has reached the Court a month later on 21.06.2013! Though we are disbelieving this part of his evidence, we are believing the other part of his evidence, wherein, he has stated that on 15th, at 2.00 p.m., he saw the accused along with policemen near Councillor Nagaraj's house and learnt that the accused have murdered Premkumar and had buried him in S.R. Process' plot. Initially, we thought that the reference to "15th" in the chief-examination could be a typographical error. However, in the cross-examination also, he has reiterated that on 15.05.2013, he was enquired by the police. Therefore, this part of the testimony of this witness, along with certain other materials which we have alluded to above, has made us come to the conclusion that the accused came into police custody even before 17.05.2013.

54.3 Sahadevaraja [PW-9], in his evidence, has stated that he is a Siddha doctor; on 04.05.2013, he, along with his Assistant-Chinnaparaj, went to S.Ramalingapuram to treat a patient and while they were returning around 11.45 p.m. to 12.00 midnight, they came via SIPCOT area; at that time, their vehicle stopped for want of petrol; they saw a Maruti Omni van coming, in which, Sivaranjith [A-1] was on the wheels; they stopped the Maruti Omni van and asked for petrol; at that time, they saw a person lying in the back seat of Maruti Omni van; Sivaranjith [A-1] told him that he himself does not have petrol; when they asked him as to who was the person lying in the back seat, he told them that the said person had consumed liquor too much and he is taking him to his factory; a little later, they saw Sakthikumar [A-2] coming by his motorbike and they stopped him and asked him for petrol; Sakthikumar [A-2] told them that he has a petrol can, but, does not have petrol to spare; then, they asked Sakthikumar [A-2] as to who is that person in the back seat of Maruti Omni van, for which, Sakthikumar [A-2] replied that that person had got drunk and had become inebriated; after that, they saw the accused going into SIPCOT Industrial Estate; on 18.05.2013, while he and his Assistant Chinnaparaj were waiting in Rajapalayam Bus Stand for taking a bus

to Madurai, the police came there and were making enquiries; when they enquired, they were told that Sivaranjith [A-1] had murdered Premkumar; on 19.05.2013, he identified Maruti Omni van and the motorbike at the police station. In the cross-examination, initially, he denied the suggestion that SIPCOT Industrial Estate is not in the route from S. Ramalingapuram to Rajapalayam. After a few questions were put to him, he forgot as to what he had said earlier and conceded that it is not necessary to pass through SIPCOT Industrial Estate on the way to Rajapalayam from S. Ramalingapuram. He has further admitted that he did not tell anyone as to what he saw on 04.05.2013 until he was examined by the police on 18.05.2013 at the bus stand. The testimony of this witness that he saw the accused in the midnight near SIPCOT Industrial Estate and asked them for petrol and at that time, he saw someone lying in the back seat of Maruti Omni van and that when he asked the accused about that person, they told him that that person has got drunk, etc., does not inspire our confidence. That apart, his evidence that, on 18.05.2013, while he was in the Rajapalayam Bus Stand, he saw policemen making enquiries in the bus stand about the murder of Premkumar and at that time, he told them as to what he saw on 04.05.2013, defies credulity, because, according to the police, on 18.05.2013, they were all busy in

exhuming Premkumar's body and effecting recoveries at various places along with the accused. We clarify here that, the place from where the body was exhumed is in SIDCO Industrial Estate and not SIPCOT as deposed by Sahadevaraja [PW-9]. We are not attaching any great significance to this, because, he is a lay witness and may not know the subtle difference between SIDCO and SIPCOT. We are disbelieving this witness for different reasons and not for this slip of the tongue.

54.4 Similar is the evidence of Senthilkumar [PW10] who has stated that he is an auto rickshaw driver and knows the accused; on 04.05.2013, he went for a trip at 2.30 a.m. and while he was returning around 3.30 a.m., he saw a Maruti Omni van and motorbike near Kothai Nachiyarpuram and he slowed down the auto rickshaw; he saw the accused setting fire to something; when he went near and asked them as to what they were burning, they told him that they were burning garbage; on 18.05.2013, he heard about the incident and when the police came to the auto rickshaw stand, he told them as to what he saw on 04.05.2013. The fact remains that until then, he did not tell this to anyone. Even if we believe this witness, what comes out of it is that the accused were burning garbage at an unearthly

hour near Kothai Nachiyarpuram. The prosecution wants us to use this evidence to corroborate the extra-judicial confession (EX-P11) of Sivaranjith [A-1] given to Arivazhagan [PW-22]. When we have given cogent reasons for rejecting the extra-judicial confession [EX-P11], this alleged corroborative material pales into insignificance.

54.5 The highlight of the prosecution case is the evidence of Arul [PW11], who has stated that he is an auto driver; he knows the accused; on 04.05.2013, he went to Saravana Mills to meet the Mill Manager; he waited for the Manager till 7.00 p.m. and since the Manager did not turn up, he returned; on the way, near the playground of Annapparaja School, he saw the accused standing with a red colour motorbike; Sakthikumar [A-2] was speaking on his mobile; he heard Sakthikumar [A-2] saying "We have kidnapped your son Premkumar. If you want your son, you will have to pay us Rs.1.50 crores"; on seeing him, the accused took their motorbike and went away; he did not attach any importance to it; only on 19.05.2013, he learnt from the news reports about the murder of Premkumar; he thought that it may be necessary to tell the police as to what he heard on 04.05.2013. We need not read the cross-examination of this witness, because, his fantabulous version in the chief examination that

he heard Sakthikumar [A-2] speaking over mobile phone and demanding a ransom of Rs.1.50 crores for releasing Premkumar and that he did not attach any significance to it then and that he realised its importance only on 19.05.2013 when he came to know of Premkumar's murder is so incredulous that it sounds like an Aesop's fairy tale.

55 If we believe all these evidences, then, one aspect is axiomatic. The kidnap, murder and demand of ransom, have all been done by the accused openly and publicly, for all these witnesses to see them at various places, speak to them, ask for petrol and get their explanations. However, all these witnesses, in unison, remained mute till 18.05.2013. Unless we consciously decide to keep our common sense in cold storage, these tell-tale stories proffered by the aforesaid witnesses cannot be believed. In the extra-judicial confession [EX-P11], there is absolutely no reference to the names of any of these persons for the police to have approached them and enlist them as witnesses. It is apparent that all these witnesses have been procured to corroborate the rickety extra-judicial confession [EX-P11].

56 The learned Additional Public Prosecutor submitted that in the extra-judicial confession [EX-P11], it is stated that the accused and Premkumar had liquor and sleeping pills were mixed in Premkumar's drink; this stands corroborated by the presence of Diazepam in the Toxicology Report [EX-43]. Based on this, the learned Additional Public Prosecutor submitted that this Court should infer that the prosecution has proved the case to the hilt.

57 It is true that Toxicology Report [EX-P43] shows the presence of Diazepam, a psychotropic substance, in the visceral organs of Premkumar. In the confession, it is merely stated sleeping pills were mixed with liquor and given to Premkumar. But, no diazepam tablet or at least an empty strip of the said tablet was ever recovered, though it is the case of the prosecution that they recovered empty liquor bottles from Councillor Nagaraj's house. Perhaps, the accused and Premkumar were drug addicts and Diazepam was their staple drug. Had it been the case of the prosecution that the trio went on an overdose of diazepam, resulting in Premkumar dying, to cover up which, Premkumar's body was buried, then, the detection of Diazepam in the visceral organs of Premkumar may assume significance and the prosecution story could be believed. But, that is

not the prosecution story. The prosecution story is puzzlingly convoluted. The prosecution cannot now substitute a new story for sustaining the conviction. We must remind ourselves that this is a case hedged on circumstantial evidence. It is the duty of the prosecution to establish the chain of circumstances leading to an irresistible inference of the guilt of the accused. We find that the prosecution's story is riddled with inconsistencies and exaggerations. Hence, it would be wholly unsafe to sustain the conviction on the basis of the evidence presented to us in this case.

58 We observed a peculiarity in the extra-judicial confession (Ex.P.11) recorded by Arivazhagan (P.W.22). In that, the confession as made by Sivaranjith [A-1] has been recorded and in the end, the signatures of both Sivaranjith [A-1] and Sakthikumar [A-2] have been affixed. When we doubted about the very legality of this procedure, the learned Additional Public Prosecutor placed before us the judgment of the Supreme Court in **Akhlaq vs. State of Uttar Pradesh**⁵. In **Akhlaq** (supra), the accused Babu confessed to the crime to his friend Mahesh Chandra [PW-6] in the presence of Akhlaq, implicating himself and Akhlaq. The Supreme Court relied upon

5 (2009) 17 SCC 221

Sivarajan vs. State⁶ and held that the conduct of Akhlaq in remaining silent when Babu made the extra-judicial confession to Mahesh Chandra [PW-6] comes within Explanation 2 to Section 8 of the Evidence Act and treated it as an incriminating circumstance against Akhlaq and the extra-judicial confession was also used under Section 30 of the Evidence Act against Akhlaq. We carefully read **Sivarajan** (supra). In that case, the two Judges of the Kerala High Court, viz., Sankaran and P.T. Rama Nayar, JJ. heard the appeal of two accused and concurred to confirm the conviction of A-1, but, differed qua A-2. Therefore, the case qua A-2 was placed before the third Judge, viz., Koshi, CJ. In that case, PW-2, the mother of the deceased suspected the involvement of A-1 and A-2 in the offence and publicly proclaimed her suspicion in the presence of A-2. Since A-2 remained silent and did not react, Koshi, CJ., brought this conduct of A-2 within Explanation 2 of Section 8, *ibid.* Thus, in **Sivarajan** (supra), the extra-judicial confession was not the subject matter of relevancy under Explanation 2 of Section 8, but, the conduct of A-2 in remaining silent when PW-2 was accusing him in his presence.

59 When time and again, the Supreme Court has held that an extra-judicial confession is a weak piece of evidence even against the

6 1959 KLT 167

maker, the stretching of it to fasten criminal liability on the co-accused who allegedly remained silent when his compatriot was confessing, is indeed a grey area. But, in **Akhlaq** (supra), the extra-judicial confession was made by Babu to his friend Mahesh Chandra [PW-6] in the presence of Akhlaq. Mahesh Chandra [PW-6] testified about it in the Trial Court. Here, the extra-judicial confession by Sivaranjith [A-1] is before Arivazhagan [PW-22], Village Administrative Officer, who has recorded it. Definitely, Mahesh Chandra [PW-6] in **Akhlaq** (supra) and Arivazhagan (P.W.22) in this case, cannot be placed on the same pedestal. Section 164 Cr.P.C. lays down strict procedural rules which a Judicial Magistrate is required to follow before recording a judicial confession. Section 164 Cr.P.C. does not contemplate chorus confessions by more than one accused. The Judicial Magistrate will have to record the confessions of more than one accused in a given case separately after explaining to each one of them, the consequences of giving the confession. When rules for recording a judicial confession are so strict, can we afford to have loosened standards for the Village Administrative Officers for recording joint extra-judicial confessions?

60 Before parting, we are constrained to observe that the investigation in this case is beset with artificiality, rendering the prosecution's case open to serious doubt. On an overall assessment of the evidence, we are convinced that the prosecution obtained the alleged extra-judicial confession [EX-P11] and had then gone about obtaining evidence to support it. This, we notice, is a recurring practice. The investigative technique of securing confessions and then working backwards to engineer sufficient materials to corroborate it, results in artificial and exaggerated prosecution versions that ultimately end in acquittals. This is one such case. We are reminded of the observations made by Douglas Straight, O.C.J. of the Allahabad High Court in the celebrated case of **Queen Empress v. Babu Lal**⁷, where, the learned Chief Justice opined as under:

“..... that in almost every case of serious gravity or difficulty, the primary object towards which police direct their attention and energies is, if possible, to secure a confession To repeat a phrase, I used on a former occasion, instead of working up to the confession, they (the police) work down from it, with the result that we frequently find ourselves compelled to reverse the convictions simply because, beyond the confession, there is no tangible evidence of guilt.”

We find ourselves in complete agreement with the learned Chief Justice, whose observations are as relevant today as they were in 1884.

7 (1884) ILR 6 All. 509

61 In the ultimate analysis, the conviction and sentence slapped on Sivaranjith [A-1] and Sakthikumar [A-2] vide judgment dated 18.04.2016 passed in S.C.No.53 of 2015 on the file of the Principal Sessions Court, Srivilliputhur, are set aside and the accused are acquitted of the charges.

In the upshot, Crl.A. (MD) Nos.264 of 2016 and 101 of 2019 preferred by Sivaranjith [A-1] and Sakthikumar [A-2] respectively are allowed and Crl.A. (MD) No.352 of 2016 filed by Gajendra Raja [PW-1] seeking capital punishment to the accused stands dismissed. Fine amount, if any, paid by the accused shall be refunded. The accused are directed to be released forthwith, provided, they are not required in connection with any other case.

[P.N.P.J.] & [B.P.J.]

30.04.2019

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Index : Yes/No
Speaking Order

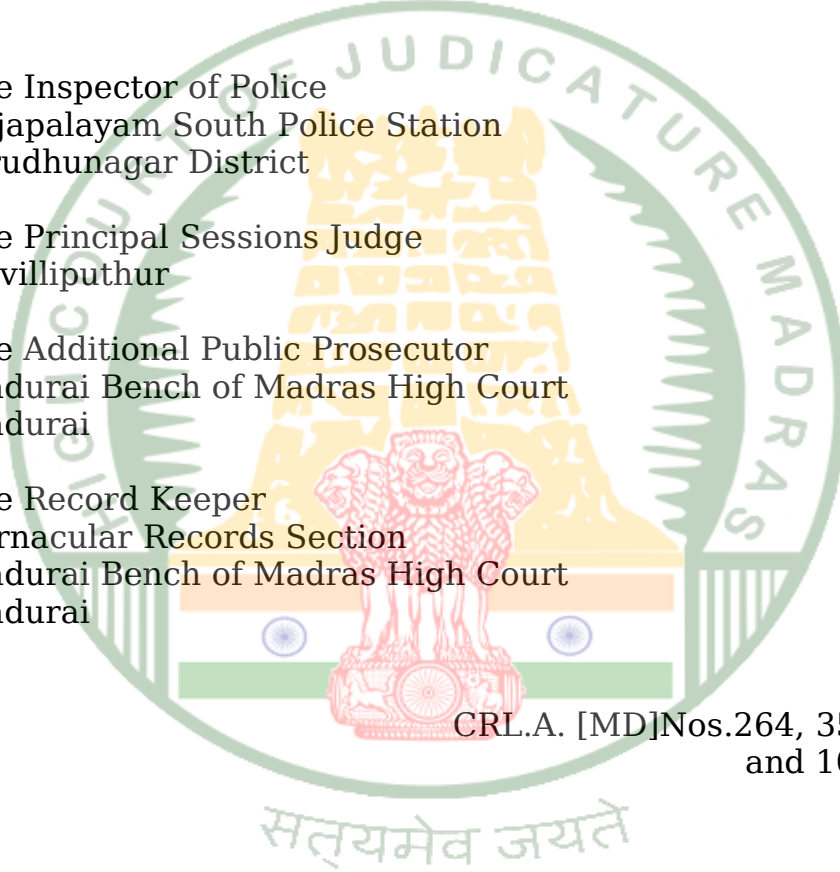
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P.N.PRAKASH, J.
AND
B.PUGALENDHI J.

NB/cad

To

1. The Inspector of Police
Rajapalayam South Police Station
Virudhunagar District
2. The Principal Sessions Judge
Srivilliputhur
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai
4. The Record Keeper
Vernacular Records Section
Madurai Bench of Madras High Court
Madurai



CRL.A. [MD]Nos.264, 352 of 2016
and 101 of 2019

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