

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2017
 PRONOUNCED ON : 25.10.2017

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH
 AND
 THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Referred Trial No.2 of 2017
 and
 Criminal Appeal Nos.402 and 465 of 2017

Referred Trial No.2 of 2017:

State
 represented by the Deputy Superintendent of Police
 Namakkal Complainant

vs.

Kamaraj
 Elangovan Accused (A2 and A3)

Criminal Appeal Nos.402 & 465 of 2017:

Elangovan Appellant in Crl.A. No. 402 of 2017

Kamaraj Appellant in Crl.A. No.465 of 2017

vs.

State
 represented by the Deputy Superintendent of Police
 Namakkal Police Station
 Namakkal District Respondent in both the appeals

Referred Trial numbered under Section 366 of the Cr.P.C. to go into the question of confirmation of the death sentence awarded by the Additional District and Sessions Court, Namakkal in S.C.No.94 of 2012 on 02.06.2017.

Criminal Appeal No.402 of 2017 filed under Section 374(2) Cr.P.C. to call for the records relating to the judgment dated 02.06.2017 in S.C.No.94 of 2012 on the file of the Additional District

and Sessions Court, Namakkal and set aside the same as illegal.

Criminal Appeal No.465 of 2017 filed under Section 374(2) Cr.P.C. to set aside the conviction order dated 02.06.2017 passed against the appellant in S.C. No.94 of 2012 on the file of the Additional District and Sessions Court, Namakkal.

In Referred Trial:

| | |
|---------------|---|
| For the State | Mr.R.Rajarathinam Public Prosecutor assisted by Mr. C. Emalias Addl. Public Prosecutor |
| For A2 | Mr. R. Rajasekaran |
| For A3 | Mr. M. Subash Babu |

In Criminal Appeals:

| | |
|------------------------------------|--|
| For A2 | Mr. R. Rajasekaran (Crl.A.No.465 /2017) |
| For A3 | Mr. M. Subash Babu (Crl.A. No.402 of 2017) |
| For respondent in both the appeals | Mr.R.Rajarathinam Public Prosecutor assisted by Mr. C. Emalias Addl. Public Prosecutor |

COMMON JUDGMENT

P.N. PRAKASH, J. & C.V.KARTHIKEYAN, J.

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The reference in R.T. No.2 of 2017 has been made by the learned Additional District and Sessions Judge, Namakkal, under Section 366 Cr.P.C., seeking confirmation of the capital punishment imposed upon Kamaraj (A2) and Elangovan (A3) vide judgment dated 02.06.2017 in S.C. No. 94 of 2012. Kamaraj (A2) and Elangovan (A3) have independently preferred Criminal Appeal Nos.465 of 2017 and 402 of 2017 respectively, challenging their convictions and sentences.

2 The case of the prosecution, culled out from the materials on record, is as follows:

2.1 This is a case of triple murder for gain. Umadevi (P.W.1) and her husband Dr. Sundaram (P.W.4) are the owners of Annai Eye Hospital and Annai Optical in Fort Road, Namakkal. Dr.Sundaram (P.W.4) is an Ophthalmologist by profession and his wife Umadevi (P.W.1) manages the hospital. The couple live in the ground floor of the hospital and they have no children. The couple own an independent bungalow a kilometre away in Mullai Nagar. The father of Umadevi (P.W.1) died sometime in 1977 leaving behind his wife Visalakshi (D1), one son by name Sivagurunathan and three daughters, viz., Sathyavathi (D3), Parvathy (P.W.7) and Umadevi (P.W.1). Sathyavathi (D3) was married to Dr. Thirumalaiswamy (P.W.8), an E.N.T. specialist and through the said wedlock, she begot a daughter Sindhu (D2), who also became a medical professional. As Sathyavathi (D3) got estranged from her husband Dr.Thirumalaiswamy (P.W.8), she started living separately with her daughter Dr. Sindhu (D2). Dr. Sindhu (D2) was married to Dr.Balasubramaniam (P.W.9), an Orthopaedic Surgeon and they have a daughter named Abinandhini, aged about 6 years.

2.2 It appears that the sisters, viz., Sathyavathi (D3), Umadevi (P.W.1) and Parvathi (P.W.7) were very close and since

Umadevi (P.W.1) was issueless, she was very fond of the daughter of her sister Sathyavathi (D3), viz., Dr. Sindhu (D2) and they treated Dr. Sindhu (D2) as their own child. Since Sathyavathi (D3) was estranged from her husband, the family decided to house Visalakshi (D1) and Sathyavathi (D3) in the house of Umadevi (P.W.1) at Mullai Nagar. Since Dr. Sindhu (D2) was in active practice, she left her child Abinandhini in the care and custody of her mother Sathyavathi (D3) and grandmother Visalakshi (D1) in their Mullai Nagar residence.

2.3 Ten days prior to the incident, Dr. Sindhu (D2) came to the Mullai Nagar residence to be with her mother Sathyavathi (D3) and daughter Abinandhini. A gruesome tragedy struck the family on 13.10.2011 between 3.15 p.m and 3.30 p.m., when two persons entered into the house. Those two persons, after tying up the inmates, slit the neck of Visalakshi (D1), Dr. Sindhu (D2) and Sathyavathi (D3) and left with a huge haul of gold jewellery from them. There was a little life left in Sathyavathi (D3) and so, she managed to come out of the house and entered the house of her neighbour Sampathkumar (P.W.2). Sampathkumar (P.W.2) and his wife were aghast on seeing Sathyavathi (D3) bleeding all over and unable to speak, as she was having cut injuries on her neck and left wrist. Sathyavathi (D3) wanted to write something and so, Sampathkumar (P.W.2) gave her a scrap of paper, on which, Sathyavathi (D3) wrote in Tamil as follows:

"mk;kh vd;d Mdhh;/ rpe;Jit fhg;ghw;W';fs;/ mgpia !;TypypUe;J

TI;o tut[k;/ ,uz;L ngh;/ 3/30 kzp/ rpe;J capnuhL ,Uf;fpwjh>"

She left her blood stains on the paper.

2.4 Immediately, Sampathkumar (P.W.2) and his wife went to the next door to see what had happened and at that time, Umadevi (P.W.1) and her husband Dr. Sundaram (P.W.4) were entering into the house. Umadevi (P.W.1) was shocked to see her mother Visalakshi (D1) beneath the staircase, lying in a pool of blood, with cut injuries in her neck and with a lungi tied around her neck. Thereafter, she saw her niece Dr. Sindhu (D2) in the dining hall, lying in a pool of blood, with cut injuries in her neck, with her hands and legs tied. This ghastly scene terrified them and when they came out, they were called by Sampathkumar (P.W.2), who told them that Sathyavathi (D3) is in his house.

2.5 Umadevi (P.W.1) and her husband Dr. Sundaram (P.W.4) rushed to the house of Sampathkumar (P.W.2), where, they found Sathyavathi (D3) in a pathetic situation. Sampathkumar (P.W.2) called "108" ambulance and Sathyavathi (D3) was rushed immediately to the Government Hospital and from there, she was shifted to Dr.Aravind Hospital for intensive treatment. Sathyavathi (D3) lost her consciousness and was in a critical condition at Dr.Aravind Hospital till 31.10.2011 under the treatment of Dr. Mani (P.W. 38) and thereafter, when her condition started deteriorating further, she was taken to K.M.H. Hospital in Coimbatore, where, she ultimately breathed her last on 14.11.2011.

2.6 Noticing that the jewels worn by her mother Visalakshi (D1), Dr.Sindhu (D2) and Sathyavathi (D3) were missing, it became apparent to Umadevi (P.W.1) that it was a murder for gain. Hence, she lodged a written complaint (Ex.P.1) enclosing the blood-stained note (Ex.P.2) left by Sathyavathi (D3), based on which, Subramaniam (P.W.52), Circle Inspector of Namakkal Police Station registered an F.I.R. (Ex.P.47) in Cr. No.1636 of 2011 on 13.10.2011 at 5.00 p.m. for the offences u/s 302 and 392 IPC. The original complaint (Ex.P.1), the blood-stained note (Ex.P.2) written by Sathyavathi (D3) and the printed FIR (Ex.P.47), reached the jurisdictional Magistrate at 7.00 p.m. on 13.10.2011, as could be seen from the endorsement of the Magistrate thereon.

3 In the complaint (Ex.P.1), Umadevi (P.W.1) has given the list of missing jewellery which is as follows:

Jewellery of Visalakshi (D1):

- ½ sovereign gold ring

Jewellery of Dr. Sindhu (D2):

- 9 ½ sovereigns of thali chain
- 2 bangles each weighing 2 sovereigns
- 2 gold rings weighing ½ sovereign each
- a pair of ear rings weighing ½ sovereign each

Jewellery of Sathyavathi (D3):

- 1 thali chain weighing 7 ½ sovereigns
- 2 bangles weighing 2 sovereigns each
- 2 rings weighing ½ sovereign each

Thus, totally, 28 sovereigns of gold jewellery were found missing from the deceased trio.

4 Investigation of the case in Namakkal P.S. Cr. No.1636 of 2011 was taken over by Thamaraiselvan (P.W.57), Inspector of Police, Rasipuram Police Station, who was in charge of Namakkal Police Station at the relevant point of time, who went to the place of occurrence at the residence of the deceased in Mullai Nagar around 6.30 p.m. on 13.10.2011 and in the presence of Ravichandran (P.W.10), Village Administrative Officer and Subramaniam (P.W.11), Village Assistant, prepared Observation Mahazar (Ex.P.4) and rough sketch (Ex.P.50). In the scene of occurrence, he recovered the following articles under the cover of mahazar (Ex.P.5):

- A sharp edged knife (M.O.1)
- Tiles with and without blood stains (M.O.2) from the place where the body of Visalakshi (D1) was found
- Tiles with and without blood stains (M.O.3) from the place where the body of Dr. Sindhu (D2) was found
- Lungi cloth (M.O.4) from the neck of Visalakshi (D1)
- Lungi cloth (M.O.5) tied around the neck of Dr. Sindhu (D2)
- Lungi cloth (M.O.6) tied around the neck of the injured Sathyavathi (D3)
- Blood samples of Dr. Sindhu (D2) and Visalakshi (D1) (M.O.7.)

The seized items were sent to the jurisdictional Court on 14.10.2011 at 6.00 p.m., as could be seen from the endorsement of the Magistrate thereon.

5 At the request of the Investigating Officer, Karuppannan (P.W.42), finger print expert, came to the house of occurrence on 13.10.2011 and from the inner side of the main door, he lifted three finger prints and from the wall tiles in the kitchen, he lifted two finger prints and compared them with the finger prints of the inmates of the house and also with the data available with the Finger Print Bureau. The two finger prints which were lifted from the wall tiles of the kitchen tallied with those of Sathyavathi (D3). The three finger prints which were lifted from the inner side of the main door, tallied with those of a known offender by name Santhanam, S/o Vijayaram, who was concerned in Vellore P.S. Cr. No.843 of 2011 under Sections 457 and 380 IPC. The memorandum prepared by Karuppannan (P.W.42) relating to lifting of finger prints from the scene of occurrence was marked as Ex.P.32 and his opinion was marked as Ex.P.31 and the memorandum submitted by him to the Judicial Magistrate No.I, Namakkal, was marked as Ex.P.30.

6 On the orders of the Superintendent of Police, Namakkal dated 14.10.2011, the investigation of the case was transferred to Parameswara (P.W.58), Deputy Superintendent of Police, who was assisted by Subramaniam (P.W.59), who ultimately filed the final report in this case.

7 Thamaraiselvan (P.W.57), the Inspector of Police, conducted inquest over the bodies Visalakshi (D1) and Dr. Sindhu (D2) and sent the bodies to the Government Hospital for post-mortem.

8 Dr. Karunanidhi (P.W.39) conducted post-mortem on the body of Visalakshi (D1) and issued post-mortem certificate (Ex.P.22). He has noted in his evidence and in the post-mortem certificate (Ex.P.22) the following external injuries on the body of Visalakshi (D1):

"1 Lacerated injury around right side neck to left side neck. Size 15 x 6 x 3 cm. (Below right ear (?) to middle of left side clavicle bone with Tracheal cut injury.

2 Cut injury over right shoulder back size 10 x 5 x 3 cm. in length.

3 Right shoulder back (n.c.) 3 x .2 x 1 cm.

4 Lacerated injury (n.c.) right occipital region 7 x .3 x bone depth.

5 Lacerated injury left side face (near left ear) size 3 x .1 x 1 cm.

6. Abrasion over right ear pinna

Skull: intact; Membrane: intact; Brain: normal; hyoid bone preserved. Thorax: Ribs intact; Lungs: Pale; Heart: Chambers empty; stomach: undigested food particle around 250 gm. present; Intestine: distended. Liver, kidney, spleen organs-Pale; Bladder: empty. Uterus: empty."

After getting the viscera and hyoid bone reports, he has opined that Visalakshi (D1) would have died on account of excessive blood loss due to the injuries sustained by her and shock. In his evidence before the Court, he has stated that the injuries could have been caused by

9 Dr. Chitra, (P.W.40) performed autopsy on the body of Dr.Sindhu (D2) and issued post-mortem certificate (Ex.P.25). In her evidence before the Court and in the post-mortem certificate (Ex.P.25), she has noted the following injuries:

"Appearances found at post-mortem:

Moderately built and nourished female body lies on its back clothes soaked with (n.c.). Eyes-partially opened, mouth closed. Legs tied, hands tied in the back.

External examination:

1. *An incised wound in front of the neck measuring about 75 inch length, 2 inch breadth. 1.5 inch depth at the level of the thyroid cartilage extending from right side 5 cm below the right ear lobe to left side 5 cm below the left angle of the mandible. Margins clear cut. Trachea opened. Great vessels in front of the neck opened. Muscle in the anterior compartment of the neck cut.*
2. *Incised wound 2.5 inch x 0.5 inch x 0.5 inch in front of the neck above the previous one.*
3. *Linear abrasion 3.5 inch (l) x 0.5 inch (b) near left shoulder.*
4. *Linear abrasion 3 inch x 0.5 inch (b) present 5 cm. below the left clavicle.*

Internal examination:

Skull: intact; membrane intact; back of the skull: intact, Brain: Normal, Thorax: ribs intact.

Lungs: Pale, intact; Heart: Chamber empty. Hyoid Bone-preserved. Liver, spleen, kidney-pale and intact. Intestine distended with gas; stomach: (n.c.) 250 ml. of undigested food present: bladder empty, uterus-empty; spinal cord-intact. Organs preserved for chemical analysis: 1. Stomach and its content 2. Intestine and its content 3. liver, 4. Kidney, 5. Preservative, 6. Hyoid Bone, 7. Vaginal swab."

After obtaining viscera and Hyoid bone report, Dr. Chitra (P.W.40), has given her opinion in Ex.P.24 as to the cause of death as follows:

"I am of the opinion that the deceased would appear to have died of shock with haemorrhage due to major vessels of the neck cut injury and trachea opened and died about 18-24 hours prior to PM examination."

10 As stated above, Sathyavathi (D3) was first rushed to the Government Hospital at Namakkal, where, she was examined by Dr.Baskar (P.W. 50), who made entries in the Accident Register, the copy of which is Ex.P.39. He has noted the following two injuries:

"Nature of injuries/treatment:

- 1 Lacerated wound in left arm exposing wrist joint bone
- 2 Cut injury in neck 8 cm x exposing the (n.c.)"

Further, he advised that Sathyavathi (D3) should be admitted as in-patient, but, her relatives stated that they would take her to a private hospital for treatment and therefore, she was rushed to Aravind Hospital in a very critical condition, where, she was treated by Dr.Mani (P.W.38) till 31.10.2011. Since she had to be kept on ventilator, she was shifted from Aravind Hospital to K.M.H. Hospital in Coimbatore. Dr.Mani (P.W.38) issued discharge summary (Ex.P.20). Dr.Kesavamoorthy (P.W.53) of K.M.H. Hospital at Coimbatore, admitted Sathyavathi (D3) in the I.C.U. and gave her treatment till 14.11.2011, despite which, he was not able to save her. Sathyavathi (D3) died around 12.50 p.m. on 14.11.2011. Subramaniam (P.W.59) conducted inquest over the body of Sathyavathi (D3) and the inquest report is (Ex.P.59). Thereafter, the body of Sathyavathi (D3) was sent to the Government Medical College and Hospital, Coimbatore, where, Dr. Jayasingh (P.W.56) performed autopsy over the body of Sathyavathi (D3) and issued post-mortem certificate (Ex.P.49). Dr. Jayasingh (P.W.56), in his evidence and in the post-mortem certificate (Ex.P.49), has noted the following ante-mortem injuries:

"The following ante mortem injuries noted on the body:

1 Old healed linear scar 8 cm. in length noted over top of left shoulder, 5 cm in length noted over lateral aspect of left lower arm and 4 cm in length noted over back of left upper forearm.

2 Recently removed sutured healed scar 6 cm in length noted over back of left lower forearm, 7 cm. in length noted over back of left wrist, 6 cm in length noted over back of left hand and 4 cm in length noted over back of lower part of left hand.

3 Infected wound 3 x 2 cm. noted over lateral aspect of left index finger.

4 Recently healed wound 3 cm. in length noted over inner aspect of right thigh, K.wire fixation noted on lateral aspect of left wrist joint.

5 Healed scar 15 cm. in length noted over back of upper chest at the level of T-3 vertebra.

6 Bed sore noted over right gluteal region.

7 Horizontal linear scar 15 cm in length noted over middle of neck.

On dissection of Neck: Front and right side neck muscle found sutured measuring 10 cm in length. Right external jugular vein found sutured. Hyoid bone intact. Trachea found recently healed sutured at the level of 1 cm. below the vocal cord."

In his final opinion, Dr. Jayasingh (P.W.56) has stated as follows:

"OPINION: The deceased would appear to have died of neck injury and its complication. Viscera does not contain any poison."

11 Since the police were clueless, search parties were set up to apprehend the suspects, but, to no avail. Breakthrough came in this case with the voluntary appearance of Elangovan (A3) on 17.01.2012 before Balu @ Balasubramaniam (P.W.21), a Congress politician, to whom Elangovan (A3) confessed the commission of not only the present offence, but also the murder for gain of two ladies and one child on 28.12.2011 within the jurisdiction of Karur District, in which, he and two others, viz., Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) were involved.

12 Balu @ Balasubramaniam (P.W.21) produced Elangovan (A3) before Parameswara (P.W.58), Investigating Officer. Elangovan (A3) made a startling disclosure about his involvement not only in this case, but also in the triple murder case in Karur District and a robbery case in Paramathi limits. The statement of Elangovan (A3) was recorded in the presence of Balu @ Balasubramaniam (P.W.21) and Murugesan (P.W.30). The police formed a special team comprising Parameswara (P.W.58), Subramanian (P.W.59), Shanmugam (P.W.55) and other policemen to effect seizures not only in this case, but also in the other two cases.

13 On the showing of Elangovan (A3), the Investigating Officer apprehended Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) around 9.45 p.m. on 17.01.2012. Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) were interrogated and they disclosed certain facts, pursuant to which, discoveries were made and therefore, it becomes relevant under Section 27 of the Evidence Act.

14 Pursuant to the disclosure of Santhanam @ Manoj Kumar (A1) that he had handed over the jewellery relating to the present case to his friend Vimal Raj (P.W.25), who, in turn, had sold it to Saravanan (P.W.27), who has a jewellery shop in Vaniyambadi, the police took Vimal Raj (P.W.25) and Rajesh (P.W.26) to the shop of Saravanan (P.W.27), from where, they recovered one thali chain and

five rings (M.O.13 series) under the cover of mahazar (Ex.P.10) attested by Sivabalan (P.W.23) and Selvaraj (P.W.24). On further disclosure of Santhanam @ Manoj Kumar (A1) that he handed over a part of the jewellery to his friend Kumar (P.W.28), the police party went to the house of Kumar (P.W.28) and recovered a 7½ sovereign thali chain (M.O.14) under the cover of mahazar (Ex.P.16) in the presence of Ravi (P.W.29) and Venugopal (P.W. 31). Exs.P.10 and P.16 reached the jurisdictional Court on 18.01.2012, as could be seen from the endorsement of the Magistrate thereon.

15 From the disclosure made by Kamaraj (A2), the police recovered a knife (M.O.8) and a blood-stained jeans pants (M.O.12) under the cover of mahazar (Ex.P.9) in the presence of an independent witness, viz., Balasubramanian (P.W.22), Village Administrative Officer, which were kept hidden in a bush. From the residence of Kamaraj (A2), the police recovered two bangles weighing 4 ½ sovereigns (M.O.9) and an Ind Suzuki bike (M.O.10) under the cover of mahazar (Ex.P.7) in the presence of Balasubramanian (P.W.22).

16 From the disclosure statement of Elangovan (A3), police recovered 2 bangles weighing 3 ½ sovereigns (M.O.11) from his residence under the cover of mahazar (Ex.P.8) in the presence of Balasubramanian (P.W.22).

17 Exs.P.7 to P.9 reached the jurisdictional Court on 18.01.2012. After effecting the recoveries and seizures, Santhanam @ Manoj Kumar (A1), Kamaraj (A2) and Elangovan (A3) were produced before the Judicial Magistrate No.I, Namakkal, on 18.01.2012 at 6.30 p.m. and they did not make any complaint of ill treatment and they were placed under judicial custody.

18 On the request made by the Investigating Officer, the District Munsif-cum-Judicial Magistrate, Paramathi, recorded the 164(5) statement of the following witnesses on 28.01.2012:

Vimal Raj (P.W.25) S/o Venkatesan
 Rangan, S/o Lakshmanan (not examined)
 Mani S/o Lakshmanan (not examined)
 Rajesh (P.W.26), S/o Karunakaran

TEST IDENTIFICATION PARADE:

19 On 30.01.2012, Ms. Nandhini Devi (P.W.37), District Munsif-cum-Judicial Magistrate, Paramathi, conducted Test Identification Parade for identification of Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) by witnesses Ajith (P.W.18), Mohanraj (P.W.19) and Kathiresan (P.W.20).

20 Ajith (P.W.18) and Kathiresan (P.W.20) identified Santhanam @ Manoj Kumar (A1) and Kamaraj (A2). Mohanraj (P.W.19) identified Santhanam @ Manoj Kumar (A1). The Test Identification Parade report was marked as Ex.P.17.

21 The Investigating Officer, Parameswara (P.W.58) examined the doctors who conducted the post-mortems and all the witnesses and completed the investigation and filed a final report before the Judicial Magistrate No.I, Namakkal, for offences u/s 120-B, 449, 449 r/w 120-B, 392 r/w 387, 392 r/w 120-B, 302 (3 counts) and 302 (3 counts) r/w 120-B IPC against Santhanam @ Manoj Kumar (A1), Kamaraj (A2) and Elangovan (A3).

22 The accused were furnished with copies of the relevant documents under Section 207 Cr.P.C. and the case was committed to the Court of Sessions in S.C. No.94 of 2012 and was made over to the Court of the Additional District and Sessions Judge, Namakkal.

23 It is the case of the prosecution that Santhanam @ Manoj Kumar (A1), Kamaraj (A2) and Elangovan (A3) conspired to commit the offence of murder for gain, pursuant to which, they identified the Mullai Nagar house where the three ladies were living and on 13.10.2011, they struck between 3.15 p.m. and 3.45 p.m.; Elangovan (A3) stood guard outside the house when Santhanam @

Manoj Kumar (A1) and Kamaraj (A2) forcefully entered the house, slit the throats of the three ladies in the house causing fatal injuries and robbed them of their jewellery, after which, all the three decamped with the booty.

24 The following charges were framed against Santhanam @ Manoj Kumar (A1), Kamaraj (A2) and Elangovan (A3) by the trial Court on 02.01.2013:

| | |
|-----|--|
| A-1 | 120-B, 449,392 r/w 397, 302 (3 counts) IPC |
| A-2 | 120-B, 449, 392 r/w 397, 302 (3 counts) IPC |
| A-3 | 120-B, 449 r/w 120-B, 392 r/w 120-B & 302 (3 counts) r/w 120-B IPC |

25 When questioned, all the three accused pleaded 'not guilty'. Before the commencement of the trial, Santhanam @ Manoj Kumar (A1) died on 08.07.2013 and therefore, the charges against him abated.

26 The trial in S.C. No.94 of 2012 proceeded before the Additional District and Sessions Judge, Namakkal, as against Kamaraj (A2) and Elangovan (A3) and commenced on 22.06.2015 with the examination of Umadevi (P.W.1). The prosecution examined 59 witnesses and marked 59 exhibits and 14 M.Os. The accused were questioned about the incriminating circumstances appearing against them in the evidence, under Section 313 Cr.P.C. and they merely denied the same. No witness was examined nor was any document marked on the side of the accused.

27 After hearing both sides, the Trial Court, by judgment dated 02.06.2017, convicted Kamaraj (A2) and Elangovan (A3) as under:

Kamaraj (A2) (Death sentence + Double life imprisonment)

| | |
|--------------------|-------------------|
| 120-B IPC | Life imprisonment |
| 449 IPC | Life imprisonment |
| 392 r/w 397 IPC | 10 years R.I. |
| 302 (3 counts) IPC | Death sentence |

Elangovan (A3) (Death sentence + Double life imprisonment)

| | |
|------------------------------|-------------------|
| 120-B IPC | Life imprisonment |
| 449 r/w 120-B IPC | Life imprisonment |
| 392 r/w 120-B IPC | 10 years R.I. |
| 302 (3 counts) r/w 120-B IPC | Death sentence |

28 Hence, this reference under Section 366, Cr.P.C. and Criminal Appeals by the accused 2 and 3, as aforestated.

29 Heard Mr. R. Rajarathinam, learned Public Prosecutor appearing for the State in the Referred Trial and in the Criminal Appeals, assisted by Mr. C. Emalias, learned Additional Public Prosecutor, Mr. R. Rajasekaran, learned counsel for Kamaraj (A2) and Mr.M. Subash Babu, learned counsel for Elangovan (A3).

30 This case is based on circumstantial evidence and bearing in mind, the following passage from the Constitution Bench judgment of the Supreme Court in **Govinda Reddy and another v. State of Mysore [AIR 1960 SC 29]**, we propose to appraise the evidence on record:

"In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn would 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."

31 Before going into the analysis of the evidence, we hereby catalogue the facts not disputed by either side:

- Visalakshi (D1) was the mother of Sathyavathi (D3), Umadevi (P.W.1) and Parvathy (P.W.7.).
- Dr. Sindhu (D2) was the daughter of Sathyavathi (D3) and grand daughter of Visalakshi (D1).
- Visalakshi (D1) and Dr. Sindhu (D2) suffered homicidal death on 13.10.2011 in the house at Mullai Nagar.

- Sathyavathi (D3) suffered injuries on 13.10.2011 and subsequently, she died at K.M.H. Hospital in Coimbatore on 14.11.2011.

MOTIVE FOR THE MURDER:

32 It is the case of the prosecution that this was a murder for gain, whereas, to some of the witnesses, it was suggested by the accused that the murder was on account of money dispute in share transactions amongst Sathyavathi (D3) and her sisters Umadevi (P.W.1) and Parvathy (P.W.7). It was also suggested that the murder must have been engineered by Dr. Thirumalaiswamy (P.W.8), husband of Sathyavathi (D3) and father of Dr. Sindhu (D2).

33 We are unable to agree with the theory propounded by the defence that the murder must have been engineered by Umadevi (P.W.1) and Parvathy (P.W.7), because, there would have been no necessity for Umadevi (P.W.1) and Parvathy (P.W.7) to murder their own mother Visalakshi (D1) and Dr. Sindhu (D2), who is their niece. Concededly, all the three deceased were living in the house of Umadevi (P.W.1) and her husband Dr. Sundaram (P.W.4), as the said couple were childless and they were very fond of Dr. Sindhu (D2).

34 Even Parvathi (P.W.7), in her evidence, has stated that people would normally say that Dr. Sindhu (D2) is blessed with three mothers and such was her relationship with Dr. Sindhu (D2) and Sathyavathi (D3). Parvathi (P.W.7) has further stated in her evidence that all the three sisters, viz., Umadevi (P.W.1), Sathyavathi (D3) and Parvathy (P.W.7) were into share business and it was being managed by Sathyavathi (D3) and that, on account of fluctuations in share market, there would be losses and gains, which they used to take in their stride.

35 Except making such suggestions which have been denied by the witnesses, the defence were not able to produce any credible material to show that there were differences of opinion amongst the sisters, viz., Sathyavathi (D3) and Umadevi (P.W.1) and Parvathy (P.W.7), so as to form the motive for the murder of the trio.

36 Coming to the allegation against Dr.Thirumalaiswamy (P.W.8), he has stated in his evidence that he got married to Sathyavathi (D3) in 1976 and Dr. Sindhu was born to them in 1978; Dr. Sindhu (D2) completed her Medicine and was married to Dr.Balasubramaniam (P.W.9) in 2003. He has further deposed that his wife Sathyavathi (D3) was doing share business and lost heavily and he refused to finance her further. It is his further evidence that they got separated in 2008 and they had their marriage dissolved by a decree of mutual consent. It is also his evidence that he settled one

house in favour of his wife Sathyavathi (D3) and their daughter Dr.Sindhu (D2), but, they did not live in that house and instead, they preferred to stay in the house of Umadevi (P.W.1) at Mullai Nagar.

37 It was not suggested to Dr. Thirumalaiswamy (P.W.8) that he had engineered the murder, but, it was suggested to him that he developed intimacy with one Lilly, a staff nurse and that is why, he divorced Sathyavathi (D3), which suggestion was denied by him and which suggestion is irrelevant to this case.

38 However, Umadevi (P.W.1), in her complaint (Ex.P.1) given to the police, has clearly given the description of the jewellery found missing from Visalakshi (D1), Dr. Sindhu (D2) and Sathyavathi (D3), about which, we have stated above. Therefore, we have no incertitude in rejecting the theories propounded by the defence with regard to the motive for the murder and accordingly, we hold that the prosecution have proved beyond doubt that the murder of the trio were murders for gain.

EVIDENCE OF P.W.1, P.W.2 and P.W.4:

39 Umadevi (P.W.1) deposed about the general facts of the case and as regards the incident on 13.10.2011, she stated that 13.10.2011 was her father's death anniversary and she sent food through Ajith (P.W.18), a worker in Annai Eye Hospital to her mother

Visalakshi (D1) and her sister Sathyavathi (D3) around 10.00 a.m.; Ajith (P.W.18) came back to the hospital around 1.30 p.m. and around 3.00 p.m., she spoke to Dr. Sindhu (D2); again, at 3.15 p.m., when she tried contacting Dr. Sindhu (D2) over phone, Dr. Sindhu (D2) did not pick up her call and thereafter, she called Sathyavathy (D3), who also did not pick up her call; therefore, she went to the house at Mullai Nagar around 3.45 p.m. with her husband Dr. Sundaram (P.W.4.) and found that the door was open; on entering into the house, she was shocked to see her mother Visalakshi (D1) lying in a pool of blood beneath the staircase, with a lungi cloth tied around her neck; she was further shocked to see Dr. Sindhu (D2) lying in the dining hall with her hands and legs tied with injuries; around the same time, Sampathkumar (P.W.2) told her that Sathyavathi (D3) is in his house and so, she went with her husband to the house of Sampathkumar (P.W.2) and found Sathyavathi (D3) with bleeding injuries around her neck and left wrist; 108 ambulance was called and Sathyavathi (D3) was shifted to the hospital.

40 Umadevi (P.W.1) gave a hand written complaint (Ex.P.1) along with a blood-stained Note (Ex.P.2) written by Sathyavathi (D3) based on which, the police registered the FIR, about which, we have stated in detail above. On all these aspects, the evidence of Umadevi (P.W.1) has been corroborated by the evidence of her husband Dr. Sundaram (P.W.4) and Sampathkumar (P.W.2).

41 The police came to the place of occurrence along with the police photographer (P.W.47), who took photographs of the scene of occurrence which were marked as Ex.P.36 series. From the place of occurrence, the police seized a sharp long knife (M.O.1) along with other clue materials under the cover of mahazar (Ex.P.5) in the presence of Ravichandran (P.W.10) and Subramaniam (P.W.11).

42 Umadevi (P.W.1), in her evidence, has spoken about the presence of a knife on the kitchen wash basin. We perused the photographs (Ex.P.36 series) and as deposed by Umadevi (P.W.1), an old lady, presumably, Visalakshi (D1) is lying on the cot with blood splashed over her garments and a young lady, presumably, Dr. Sindhu (D2) is lying on the floor with her hands tied behind and her legs tied together. In the photographs (Ex.P.36 series), she is found wearing churidar which is drenched in blood. We also saw a knife with a wooden handle on the kitchen wash basin, where, a portion of the leg of Dr. Sindhu (D2) was found extended. This is shockingly telltale evidence and the recovery of knife (M.O.1) assumes great significance, about which, we will discuss later.

Confession of Elangovan (A3) to Balu @ Balasubramaniam (P.W.21):

43 Balu @ Balasubramaniam (P.W.21), in his evidence, has stated that he is a farmer and belongs to the Congress party and

that he had held several positions in the party; he knew Elangovan (A3) for a decade; Elangovan (A3) came to his house around 12 noon on 17.01.2012 in a nervous state and voluntarily confessed to him that, when he was arrested and jailed in another case, he came into contact with Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) in the prison and thus, they became friends; thereafter, they took a house and stayed together and committed robbery at Kuppachipalayam; on 13.10.2011, in Namakkal, they entered into a house and slit the throat of three women and took away their jewellery; again, on 28.12.2011, they entered into a house in Karur, where, they slit the throat of two women and one child and took away their jewellery and that since the police are behind him, he was scared. Balu @ Balasubramaniam (P.W.21) has further deposed that he assured Elangovan (A3) that he would surrender him to the police and ensure that he is not beaten by the police and with that assurance, he took Elangovan (A3) and handed him over to the Deputy Superintendent of Police, Namakkal, on the same day with a letter (Ex.P.6), which contained the confession made to him by Elangovan (A3).

44 In the cross-examination, Balu @ Balasubramaniam (P.W.21) has stated that he had given the letter on 18.01.2012. But, in the re-examination done by the Public Prosecutor, he has clarified that he had handed over Elangovan (A3) to police on 17.01.2012, but, his statement before the police was recorded on 18.01.2012. He has

further admitted that when he gave the letter (Ex.P.6), there were other policemen in the police station.

45 The learned counsel for the accused assailed the letter (Ex.P.6) given by Balu @ Balasubramaniam (P.W.21) and submitted that the same is an inadmissible evidence as it is a record of confession inasmuch as it is addressed to the Deputy Superintendent of Police and that admittedly, it was rendered in the police station by Balu @ Balasubramaniam (P.W.21).

46 There appears to be force in the aforesaid submission of the learned counsel for the accused that the letter (Ex.P.6) would be hit by Section 25 of the Evidence Act. However, it is in the evidence of Balu @ Balasubramaniam (P.W.21) that Elangovan (A3) came to his house and confessed to him as to how he got acquainted with the other two accused and where all, they had committed robberies and murders. As regards the incident at hand, Elangovan (A3) had specifically confessed that on 13.10.2011, they had gone to a house in Namakkal, where, they had slit the throat of three women and taken away their jewellery. This, in our opinion, is an extra judicial confession and is not hit by Section 25 of the Evidence Act, as Elangovan (A3) had given the oral confession in the house of Balu @ Balasubramaniam (P.W.21), where, police were not there. There is no requirement in law that an extra judicial confession should be written down by the listener to make it authentic. For

example, if a person were to give a confession to a Parish Catholic priest that he had committed an offence, cannot the priest give evidence in the Court about the confession?

47 The aforesaid question has been answered in the affirmative by a 9 Judge Bench of the Supreme Court of Canada in **Adele Rosemary Gruenke vs. Her Majesty the Queen [1991 SCC Online Can. SC 85]**. Lamer, C.J., speaking for the majority has opined thus:

"In my view, religious communications, notwithstanding their social importance, are not inextricably linked with the justice system in the way that solicitor-client communications surely are".

Of course, the Bench has suggested the application of the Wigmore Test on a case-to-case basis. In India, we have a codified law of evidence where the privileges have been set out in Sections 122 to 129, where, there is no bar for the admissibility of a confession given to a priest.

48 Yet another example is, if one were to give a confession to an illiterate person that he had committed a crime, can that illiterate person not come to the Court and give evidence about the confession given to him without there being any contemporaneous written record made at the time of the confession? One should remember that we have a huge illiterate population in our country and to hold that, only literates can listen to confessions and depose about it in the Court would be a travesty of justice. In **State of Andhra**

Pradesh vs. Gangula Satya Murthy [1997] 1 SCC 272, the Supreme Court has held as under:

"17. . . . The second reason is that the said extra-judicial confession was reduced to writing as Ext. P-7, inside the police station and hence it is hit by Section 26 of the Evidence Act, 1872.

20. But the confession made by the respondent to PW 6 and PW 7 was not made while he was anywhere near the precincts of the police station or during the surveillance of the police. Though Ext. P-7 would have been recorded inside the police station its contents were disclosed long before they were reduced to writing. We are only concerned with the inculpatory statement which the respondent had made to PW 6 and PW 7 before they took him to the police station. So the mere fact that the confession spoken to those witnesses was later put in black and white is no reason to cover it with the wrapper of inadmissibility. We find that the High Court has wrongly sidelined the extra-judicial confession."

49 In view of this authoritative exposition of the law, we are of the view that, even if Ex.P.6 is held as inadmissible, the evidence of Balu @ Balasubramaniam (P.W.21) before the Trial Court in which he has deposed about the confession given by Elangovan (A3) cannot be jettisoned.

50 Though extra judicial confession is a weak piece of evidence, but, the same is not totally inadmissible. The Court has to independently analyse the intrinsic worth of it before accepting or rejecting it. In a given case, as in this, the evidence of Balu @ Balasubramaniam (P.W.21) to whom Elangovan (A3) has confessed, does inspire our confidence.

51 In the case at hand, it was merely suggested that Elangovan (A3) was arrested 10 days ago and was kept in illegal custody and at the request of the police, false evidence is being given,

which, of course, Balu @ Balasubramaniam (P.W.21) has denied. It was not suggested to Balu @ Balasubramaniam (P.W.21) that he does not know Elangovan (A3) at all. Even in the Section 313 Cr.P.C. examination of Elangovan (A3), he has not stated that he did not know Balu @ Balasubramaniam (P.W.21) at all. It was also not suggested that Balu @ Balasubramaniam (P.W.21) had any previous enmity against Elangovan (A3), on account of which, he is falsely deposing against him.

52 In view of the above discussion, we accept the evidence of Balu @ Balasubramaniam (P.W.21) to the extent that on 17.01.2012, Elangovan (A3) came to his residence at 12 noon and confessed that he, along with Santhanam @ Manoj Kumar (A1) and Kamaraj (A2), had committed the offence in the instant case. Of course, this extra judicial confession is relevant not as substantive evidence, but, in terms of Section 30 of the Evidence Act as against Kamaraj (A2) also, as both of them were tried in the same trial. It is pertinent to point out at this juncture that we are not predicating our conclusion only on the extra judicial confession as we are aware of its evidentiary value. However, we are not rejecting it in toto, as pleaded by the defence.

Spotting of Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) near the scene of occurrence:

53 It is the case of the prosecution that Ajith (P.W.18) and Kathiresan (P.W.20) had seen two persons on 13.10.2011 in and around the place of occurrence.

EVIDENCE OF AJITH (P.W.18):

54 Ajith (P.W.18) was a worker in Annai Eye Hospital run by Umadevi (P.W.1) and her husband Dr. Sundaram (P.W.8) on a monthly salary of Rs.2,000/-. In his evidence, Ajith (P.W.18) has stated that he would be deputed to take care of the garden at the Mullai Nagar residence and run errand between the hospital and the Mullai Nagar residence by the owners, including Visalakshi (D1) and Sathyavathi (D3). He has further stated that Sathyavathi (D3) used to ask him to go to ration shop or get provisions now and then and would also provide him food in the house.

55 Coming to the incident at hand, Ajith (P.W.18) has stated in his evidence that on 13.10.2011, he carried food and fruits from the hospital to the Mullai Nagar residence in the morning; he handed over the bag to Sathyavathi (D3), who asked him to sweep the garden; after he swept the garden, he was asked to go to the ration shop for purchase of ration items and accordingly, he went to the

ration shop and returned saying that, since the ration card was mutilated, the Salesman did not supply any item and hence, he returned; again, he was sent to the ration shop to find out as to where the mutilated ration card should be presented for getting a new one, for which, he went back to the ration shop to make enquiries and came back and told Sathyavathi (D3) that the mutilated ration card should be given to the Taluk Office for getting a new one; he was asked to do other odd jobs and later, Sathyavathi (D3) gave him a bag and asked him to go to the hospital; when he came out of the house, two persons who came in a motor bike, asked him "Are Sir and Madam there?" for which, he replied, "Sir is not there, only Madam is there"; after saying so, he proceeded to the hospital; later, around 4 p.m., he learnt about the murder that had taken place in the house.

56 Ajith (P.W.18) was examined by the police on 16.10.2011 and his statement reached the Court on 17.10.2011 itself, as could be seen from the Magistrate's endorsement thereon. In his evidence before the Court, Ajith (P.W.18) has deposed that one person was fair and lean and was having a bag and the other person was dark and hefty, with his left leg appearing wide spread.

57 In the Test Identification Parade, Ajith (P.W.18) identified Santhanam @ Manoj Kumar (A1) and Kamaraj (A2). In the evidence before the Court, he identified only Kamaraj (A2) and stated that Santhanam @ Manoj Kumar (A1) is not there in the dock.

Obviously, Santhanam @ Manoj Kumar (A1) could not have been there in the dock when Ajith (P.W.18) was examined on 09.07.2015, because, he had died on 08.07.2013 itself. In his cross-examination, it was asked to Ajith (P.W.18) whether the police had shown him the photographs of the suspects, for which, he replied in the negative. Except suggesting to him that he had not seen anybody, as deposed by him on 13.10.2011, for which, he denied, the defence were not able to make any serious dent in his testimony.

EVIDENCE OF KATHIRESAN (P.W.20)

58 The other person who had seen the accused in and around the spot on 13.10.2011 is Kathiresan (P.W.20). Kathiresan (P.W.20) is a farmer-cum-real estate agent. In his evidence, he has stated that on 13.10.2011, around 3.30 p.m. to 4.45 p.m., while he was returning with his friend by his motorcycle from Spectrum School side towards west, he saw two persons rushing out of a house and started a motorcycle and they were about to dash him; he shouted at them angrily and one of them who was fair and tall, menacingly threatened him by showing gestures at him and the second person told the first person to immediately leave the place and so, they sped away in their motorcycle; two days later, when he learnt about the murder that had taken place in that area, he went to the place and felt that the two persons, who had come out of the house, could possibly be the perpetrators and hence, he informed the police about the incident that had taken place on 13.10.2011.

59 The police recorded the statement of Kathiresan (P.W.20) on 16.10.2011 and it reached the jurisdictional Court on 17.10.2011. In the Test Identification Parade, Kathiresan (P.W.20) identified Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) as the persons with whom he had a confrontation on 13.10.2011. In the evidence before the Court, Kathiresan (P.W.20) identified Kamaraj (A2) and stated that the other person is not there in the dock. Kathiresan (P.W.20) was examined in the trial Court on 29.07.2015 and much before that, Santhanam @ Manoj Kumar (A1) had died on 08.07.2013. In the cross-examination, Kathiresan (P.W.20) was questioned about the location of the Mullai Nagar house and he explained in detail as to the direction in which the house was located, thereby further fortifying his version in the chief-examination. Except suggesting to him that he had not seen the incident, the defence were not able to make much headway in his cross-examination.

60 Ergo, we have no reasons to disbelieve the testimony of Ajith (P.W.18) and Kathiresan (P.W.20) that the accused were found near the place of occurrence prior to and after the incident. This should be pieced along with the evidence of Karuppannan (P.W.42), finger print expert, who has lifted the chance finger prints from the scene of occurrence, which tallied with that of Santhanam @ Manoj Kumar (A1).

61 The learned counsel for the accused submitted that the report of Karuppannan (P.W.42), finger print expert does not satisfy the requirements of law, as he had not stated either in his evidence or in his report, as to how he had arrived at the said opinion. We do not propose to delve on this issue since the finger print is that of Santhanam @ Manoj Kumar (A1) who had breathed his last during trial.

EVIDENCE OF MOHANRAJ (P.W.19):

62 Mohanraj (P.W.19) has a lathe where he makes knives and other farm implements. In his evidence, he has stated that his father started the lathe in which knives and farm implements were made and after the demise of his father, he continued to run the lathe. He has further stated that a fair and lean person came to his lathe and wanted two knives to be made saying that he needs those knives for pig hunting; he drew a model on the ground and stated that the knives should bear a sharp tip and the blades should be flat and sharp on either side; the rate per knife was fixed at Rs.500/- and he gave an advance of Rs.500/- and came the next day and collected the two knives after paying the balance of Rs.500/-. It is his specific evidence that every knife maker will have his own unique design in the handle portion and accordingly, the knives made by him will have corrugated ridges and stripes in the handle portion; therefore, he could identify the knives made by him easily.

63 The police examined Mohanraj (P.W.19) on 16.10.2011 and his statement reached the Court on 17.10.2011 itself, as could be seen from the endorsement of the Magistrate thereon. After the accused were arrested, one knife (M.O.8) was seized on the disclosure of Kamaraj (A2). Test Identification parade was done, wherein, Mohanraj (P.W.19) identified Santhanam @ Manoj Kumar (A1) as the person who had come to his lathe and purchased the two knives. In the Court, he identified the knives (M.Os.1 and 8) and stated that both the knives were made by him.

64 In his cross-examination, he was asked whether he has the necessary licence to make such knives, for which, he stated that he does not have one and that however, only on the customers' request, he would make knives for them. In the cross-examination, he admitted that there is a difference in size between M.O.1 and M.O.8. He was cross-examined with regard to the Test Identification Parade and it was ultimately suggested to him that he has given false evidence. Beyond that, there was no suggestion put to him that he had not made M.Os. 1 and 8. His identification of Santhanam @ Manoj Kumar (A1) in the Test Identification Parade does not have any relevance because Santhanam @ Manoj Kumar (A1) had died thereafter on 08.07.2013. Mohanraj (P.W.19) was examined in the trial Court only on 09.07.2015.

65 In order to satisfy our judicial conscience, we summoned M.O.s 1 and 8 from the Trial Court and had a careful look at them. Both the knives appear similar, though not identical. We do not think that they have been made by a continuous mechanical dye process for them to be identical and that they are obviously hand-made and the blades are sharpened in the lathe. The knife (M.O.1) is the knife seen in the photographs (Ex.P.36 series). The handle portion of M.Os.1 and 8 contain similar ridges and stripes. To reiterate, Section 161(3) statement of Mohanraj (P.W.19) had gone to the Court on 17.10.2011 and the knife (M.O.8) was recovered by the police on the confession of Kamaraj (A2) on 18.01.2012 under Ex.P.9, mahazar, in the presence of Balasubramanian (P.W.22). Therefore, we have no reason to disbelieve the evidence of Mohanraj (P.W.19) that it was he who had made the two knives viz., M.Os.1 and 8.

66 On the showing of Elangovan (A3), the police arrested Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) on 17.01.2012 and their disclosure statement was recorded, which provided material for the investigation in the triple murder case at Karur and the Karur police effected seizures for their case simultaneously along with the Namakkal police. From their disclosure statements, it came to light that the accused had taken a house in Aeroplane Building at Palapatti and were staying there.

HOUSE AT PALAPATTI:

67 The building named "Aeroplane Building" in Palapatti Main Road in Mohanur Village, Namakkal, belongs to Murugesan (P.W.35). In the said building, there are two shop portions in the ground floor and six rooms in the first floor. Mathivanan (P.W.32) is a tailor who was in occupation of one portion in the ground floor.

EVIDENCE OF MATHIVANAN (P.W.32)

68 Mathivanan (P.W.32), in his evidence, has stated that he knew Elangovan (A3) of Kuppachipalayam; two years before (evidence was given on 21.08.2015), Elangovan (A3) approached him and wanted a room to stay; Mathivanan (P.W.32) approached one Kuppusamy (P.W.36) and requested him to speak to the owner, Murugesan (P.W.35); accordingly, one room was given to Elangovan (A3) on a monthly rent of Rs.400/- with an advance of Rs.1,000/-, in which, apart from Elangovan (A3), two other persons were staying. In the Court, Mathivanan (P.W.32) identified Kamaraj (A2) and Elangovan (A3) and he described the other person as Manoj Kumar who will be fair, tall and lean.

69 In his cross-examination, Mathivanan (P.W.32) has stated that Elangovan (A3) would come to his shop frequently and he got acquainted with him and because of this acquaintance, he had helped Elangovan (A3) to get a room in the Aeroplane Building. He has been corroborated by Kuppusamy (P.W.36), who has stated that at the request of Mathivanan (P.W.32), he spoke to Murugesan (P.W.35) and got a room in the first floor in the Aeroplane Building for Elangovan (A3) and his two friends.

EVIDENCE OF MURUGESAN (P.W.35)

70 Murugesan (P.W.35), owner of "Aeroplane Building", has stated in his evidence that Kuppusamy (P.W.36) approached him for letting out one room to a person known to him and since Kuppusamy (P.W.36) had helped him to buy the building, he did not bother to see the tenants, but, only told Kuppusamy (P.W.36) to fix the rent at Rs.400/- per month and advance of Rs.1,000/-; four months later, on coming to know of this, the police came to the Aeroplane Building and when he asked Mathivanan (P.W.32) about this, he stated that he did not know their antecedents and apologised for recommending them.

71 These witnesses were cross-examined as to whether any oral agreement was entered into or rent receipt was given, for which, they stated that it was not a practice to enter into

any formal rent agreements. Murugesan (P.W.35) has stated that he was told by Kuppusamy (P.W.36) that the tenants were good persons and that they can be given the room and beyond that, he did not bother to verify anything about the tenants.

72 This Court carefully analysed the evidence of Mathivanan (P.W.32), Murugesan (P.W.35) and Kuppusamy (P.W.36). It is worth pointing out that the witnesses had not let out a flat-like accommodation to the accused. The Aeroplane Building has two shop portions in the ground floor and six rooms in the first floor for bachelors' accommodation. In the countryside, it is quite common that persons are accommodated in rooms on the recommendations of known persons and owners normally do not insist upon entering into rental agreements with tenants or issuance of receipts to tenants. According to the witnesses, the rent itself was fixed at Rs.400/- and the advance was only Rs.1,000/-, from which, we can gauge the nature of the accommodation. The fact that all the three accused were staying in the room was spoken to by Mathivanan (P.W.32) and Kuppusamy (P.W.36) and not by the owner of the accommodation, viz., Murugesan (P.W.35), who has stated that he had completely left it to the hands of his friend Kuppusamy (P.W.36) and had not bothered to even check who were staying in the room, as long as rent was properly being paid. All the accused were arrested on 17.01.2012 and as usual, subsequently, the case details became public in the print and electronic media. The police knew that the accused had taken a

room in the first floor of "Aeroplane Building" and this led the police to interrogate Mathivanan (P.W.32), Murugesan (P.W.35) and Kuppusamy (P.W.36). These witnesses have stated that four months prior to the matter coming to the public domain (which must be around September 2011), the accused had taken one room in the first floor of "Aeroplane Building". Therefore, from the evidence of Mathivanan (P.W.32), Murugesan (P.W.35) and Kuppusamy (P.W.36), we hold that the prosecution have satisfactorily proved that all the three accused knew one another well.

RECOVERIES AND SEIZURES:

73 Though we may not be concerned about the case of Santhanam @ Manoj Kumar (A1) since he had died *pendente* trial, pursuant to his disclosure statement, the police recovered one thali kodi and five rings (M.O.13) and 7 ½ sovereign thali chain (M.O.14), which have been identified by Umadevi (P.W.1) as belonging to Dr.Sindhu (D2) and Sathyavathi (D3).

SEIZURE RELATING TO KAMARAJ (A2) AND ELANGO VAN (A3):

74 Pursuant to the disclosure statement (Ex.P.56) of Kamaraj (A2), the Investigating Officer seized knife (M.O.8) and blood-stained jeans pants (M.O.12) under the cover of mahazar (Ex.P.9) in the presence of Balasubramanian (P.W.22).

Balasubramanian (P.W.22) was the Village Administrative Officer of Namakkal Town and on the request of the police, he went to the police station, where, the disclosure statement of Elangovan (A3) was recorded. Thereafter, Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) were arrested and brought to the police station. Balasubramanian (P.W.22) stated that Kamaraj (A2) took them to his residence from where two bangles weighing 4½ sovereigns (M.O.9) and Ind Suzuki blue colour motorbike (M.O.10), were seized under the cover of mahazar (Ex.P.7) and subsequently, Kamaraj (A2) took them to a place from where he had kept hidden the knife (M.O.8) and jeans pants (M.O.12) which were seized under cover of mahazar (Ex.P.9). The seizure has been spoken to by the Investigating Officer (P.W.59) and corroborated by Balasubramanian (P.W.22).

75 The learned counsel for the accused submitted that in the cross-examination, Balasubramanian (P.W.22) has stated that when he went to the police station, he saw all the three accused there and therefore, the contention of the prosecution that Elangovan (A3) was arrested first and only thereafter, Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) were arrested stands belied.

76 This Court carefully scanned the evidence of Balasubramanian (P.W.22) and the Investigating Officer (P.W.59). Though, initially, Balasubramanian (P.W.22) had stated that when he went to the police station, he saw three accused, in the latter part of

the cross-examination itself, he has stated that when he went to the police station first at 7 p.m., he saw only one accused, viz., Elangovan (A3) there; thereafter, he went for his dinner and returned to the police station, at which time, he had seen Santhanam @ Manoj Kumar (A1) and Kamaraj (A2). Hence, we are of the view that Balasubramanian (P.W.22) has clarified this alleged congruity satisfactorily in the cross-examination itself.

77 Pursuant to the disclosure statement of Elangovan (A3), the police recovered two bangles of 3 ½ sovereigns each (M.O.11) from the residence of Elangovan (A3) under the cover of mahazar (Ex.P.8) in the presence of Balasubramanian (P.W.22). Umadevi (P.W.1) identified the two bangles weighing 3 ½ sovereigns (M.O.11), five rings (part of M.O.13 series) and ½ sovereign ear ring (part of M.O.14 series) as belonging to Dr. Sindhu (D2). Umadevi (P.W.1) further identified the red stone-studded thali chain weighing 7 ½ sovereigns (part of M.O.14 series), two bangles (M.O.9) and 2 rings each weighing ½ sovereign (part of M.O.13 series), as belonging to Sathyavathi (D3). Besides, she identified one ½ sovereign gold ring (part of M.O.13 series) as that of her mother Visalakshi (D1).

78 In the cross-examination, Umadevi (P.W.1) was asked as to whether she could produce any receipt for having purchased the jewellery, for which, she stated that she does not have any receipt. Further, in the cross-examination, she was shown the

jewellery and asked as to how the jewellery was still maintaining its lustre, for which, she candidly replied that after the jewels were seized by the police and produced in the Court, she filed an application before the Magistrate to obtain the jewels and gave the same for polishing and have brought them to the Court, in view of the undertaking given by her at the time of taking interim custody of the jewels. This straightforward explanation given by Umadevi (P.W.1) is undoubtedly acceptable to us. It must be remembered that Umadevi (P.W.1) had given the description of these jewels even in her complaint (Ex.P.1) and after the jewels were recovered, she was asked to identify the same, which she did. After the jewels were produced before the jurisdictional Magistrate, she obtained interim custody of the same under Section 451 Cr.P.C. and had them polished, because, these jewels belonging to her loved ones will naturally be objects of preservation in the memory of the departed.

79 Coming to the knife (M.O.8), we have expatiated about this in the earlier paragraphs, where, we ourselves compared M.Os.1 and 8 and found that the assertion of the prosecution that both the M.Os., viz., M.O.1 and M.O.8 were made by Mohanraj (P.W.19), cannot be disbelieved.

80 In fine, we hereby list out the proved circumstances:

- The accused had taken a room in the first floor of the Aeroplane Building and therefore, all the three were known to one another.
- Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) were found near the place of occurrence on 13.10.2011 prior to the incident by Ajith (P.W.18).
- Sathyavathi (D3) came inside the house of Sampathkumar (P.W.2) after 3.30 p.m and before 3.45 p.m and wrote the blood-stained note (Ex.P.2), in which, she has stated "3.30 *kzp* (3.30 time) 2 *unknown persons*". This statement of Sathyavathi (D3) is a dying declaration relevant under Section 32 of the Evidence Act. Thus, the prosecution have established that the offences had taken place between 3.00 p.m and 3.30 p.m.
- Between 3.30 p.m. and 3.40 p.m., Kathiresan (P.W.20) has seen Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) very near the scene of occurrence.
- Visalakshi (D1), Dr. Sindhu (D2) and Sathyavathi (D3) suffered homicidal deaths and the jewellery worn by them that were found missing, have already been listed in the complaint (Ex.P.1) given by Umadevi (P.W.1).
- Dr. Karunanidhi (P.W.39), the surgeon who conducted post-mortem on Visalakshi (D1), has stated that he commenced the post-mortem at 11.10 a.m. on 14.10.2011. In his evidence as well in the post-mortem report (Ex.P.22), he has stated

that the time of death was 18-24 hours prior to conduct of the post-mortem. This means that the death could have occurred between 12.00 noon and 5.00 p.m. on 13.10.2011, which is in sync with the prosecution case that the death had occurred between 3.00 p.m and 3.30 p.m. on 13.10.2011. Dr. Karunanidhi (P.W.39) was not cross-examined with respect to the period given by him regarding the probable time of death.

- The extra judicial confession of Elangovan (A3) to Balu @ Balasubramaniam (P.W.21) stands accepted.
- Recoveries of gold jewellery on the disclosure statement made by Kamaraj (A2) and Elangovan (A3) and the identification of those jewellery by Umadevi (P.W.1) completes the circle.
- Discovery of the knife (M.O.8) on the disclosure made by Kamaraj (A2) and its comparison with the one found at the place of occurrence, viz., knife (M.O.1) coupled with the evidence of Mohanraj (P.W.19), who made both the knives, if viewed from the backdrop of the evidence of the doctors who conducted the post-mortems that the knife (M.Os.1 and 8) could have caused the injuries found on the bodies of Visalakshi (D1), Dr. Sindhu (D2) and Sathyavathi (D3), leads us to draw the inference that the two knives were used for the commission of the offence.
- Though there is no direct evidence for the charge of conspiracy, yet, from the proved circumstances and with the aid of Section 10 of the Evidence Act, we

hold that the offences could not have been committed without a prior concert amongst the accused.

81 At this juncture, it may be apposite to refer to the judgment of the Supreme Court in **AIR 1988 SC 1883, Kehar Singh and others vs. State (Delhi Administration)**, wherein, it has been held as under:

"275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. . . . The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. . . ."

(Emphasis supplied)

82 Though there is no direct evidence to prove the change of conspiracy, yet, from the following proved facts, we are legitimate in drawing an inference that the offences were committed pursuant to the conspiracy hatched amongst the accused.

a All the three accused had taken a room in the first floor of "Aeroplane Building" at Palapatti in September 2011, which stands established from the evidence of Mathivanan (P.W.32), Murugesan (P.W.35) and Kuppusamy (P.W.36).

b Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) were seen near the place of occurrence on 13.10.2011 around 1.30 p.m. by Ajith (P.W.18) and they asked a question to Ajith (P.W.18) as to whether Sir and Madam were there at the house, for which, Ajith (P.W.18) replied saying "Sir is not there, only Madam is there."

From this, the accused ensured themselves that there was no male member in the house.

c From the scene of occurrence, a peculiar knife (M.O.1), which is not a cutlery item, was recovered on 13.10.2011. The knife (M.O.1) and the knife (M.O.8), which were recovered on the disclosure statement of Kamaraj (A2) were both made by Mohanraj (P.W.19) on the request of Santhanam @ Manoj Kumar (A1).

d Medical opinion shows that the injuries on the deceased could have been caused by knives (M.Os.1 and 8).

e Jewels worn by the deceased were found missing and they were subsequently recovered on the disclosure statement of the three accused.

f Elangovan (A3) confessed to Balu @ Balasubramaniam (P.W.21). This extra judicial confession about which we have discussed above threadbare, is a substantive piece of evidence as against Elangovan (A3) not only for the charge of conspiracy, but also for his participation in the robbery and murders. Of course, this extra judicial confession, having been given after the conspiracy had ended, cannot be used under Section 10 of the Evidence Act as against Kamaraj (A2). However, it is relevant under Section 30 of the Evidence Act as against Kamaraj (A2,) since both Kamaraj (A2) and Elangovan (A3) underwent a joint trial.

83 The death of Santhanam @ Manoj Kumar (A1) will not have any impact on the complicity or otherwise of Kamaraj (A2) and Elangovan (A3). This situation can be best explained with the following illustration:

'A', a wealthy man, wants to eliminate his business rival 'C'. 'A' engages 'B', a hired killer. 'A' and 'B' conspire to murder 'C' on a particular date. 'A' pays the money demanded by 'B' and goes abroad so as to avoid being available in town on the day of murder of 'C'. In pursuance of the conspiracy, 'B' murders 'C'. 'A' and 'B' can be charged under Section 120-B read with 302 IPC. 'B' can be charged for the offence under Section 302 read with 120-B IPC. 'A' cannot be charged for the offence of Section 302 IPC. Supposing, after the murder of 'C', 'B' dies of heart attack, can 'A' be left scot-free? If that is the law, then, it will be easy for 'A' to escape criminal liability by eliminating 'B' after 'B' had murdered 'C'. 'A' can be charged for conspiracy with 'B' to murder 'C' even after the death of 'B'. The court cannot convict 'B', but the Court can receive the evidence against 'B'. Reception of evidence against 'B' in order to prove the charges qua 'A' is clearly not illegal. Thus, the reception of evidence against Santhanam @ Manoj Kumar (A1) deceased for proving that he was also a conspirator along with Kamaraj (A2) and Elangovan (A3) and also for proving that the murders for gain were committed pursuant to the conspiracy by all the three, cannot be said to be inadmissible. The termination of the conspiracy to commit murder for gain cannot end

merely with the murder and removal of the loot from the possession of the murdered. The umbrella of conspiracy can be safely expanded and extended upto the time when the loot is disposed of and money gained through its disposal. Until then, the conspiracy would subsist. During the subsistence of such a conspiracy, anything said and done by one conspirator is relevant as against the other under Section 10 of the Evidence Act, which reads as under:

"10. Things said or done by conspirator in reference to common design:

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

84 Dr.V.Nageswara Rao, in his treatise, the Indian Evidence Act - A Critical Commentary Covering Emerging Issues and International Developments (II edition), has given a very elucidative illustration on the contours of Section 10, which would make even a layman understand the scope of the said provision:

"1. 1.1.2010: A first entertained the idea that the existing Government must be overthrown by a people's war. He commits some murders and causes some explosions in busy areas to create panic and to subvert people's confidence in the Government. A tries to convert others also to his ideology by distributing pamphlets, literature etc.

2. 1.4.2010: B joins A and both commit some more offences in furtherance of their ideology. Conspiracy starts on this date as two persons are there. But B is liable for what A has done before he joined him because the last part of the illustration says "although they may have taken place before he joined the conspiracy or after he left it."

3. 1.8.2010: C joins the conspiracy of A and B and the three commit some more offences.

4. 1.10.2010: D joins A, B and C and the four commit some more gruesome offences.

5. 1.1.2011: B is fed up with all the bloodshed and criminal activity and, in disgust and repentance, totally disassociates himself from the conspiracy and does not take part in the activities any more.

6. 1.4.2011: E, F and G join hands with A, C and D in the conspiracy and they commit more offences.

7. 1.8.2011: A,B,C,D,E,F and G are all arrested and put on trial for the conspiracy. With their arrest, conspiracy terminates.

- In the above illustration, though technically the conspiracy started on 1.4.2010 with two persons joining hands, the liability under Section 10 commences from 1.1.2010 itself because that was the date on which "when such intention was first entertained by any one of them". *So the conspiracy starts with two but liability starts with one only.*
- So, B to G are all liable for the conspiracy and all the offences right from 1.1.2010 and up to 1.8.2011.
- Though B washed off his hands and left the conspiracy in utter remorse on 1.1.2011, he is still liable even after he left the conspiracy for all the offences committed by all the other conspirators right until 1.8.2011, the date of their arrest and termination of conspiracy. This is the result of the last part of the illustration i.e, "although they may have taken place *before he joined* the conspiracy or *after he left it.*" *यमेव जयते*
- Hence, some authors have expressed the opinion that the illustration "is wider than the section and goes beyond the English law."

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Of course, some authors are of the view that though the period of conspiracy can be extended backwards when it was first entertained by one of them, yet, all the conspirators can be convicted only for the substantive offence of conspiracy and not for the individual offence committed by one without the participation of the other. In the illustration given by Dr.V.Nageswara Rao, 'A' to 'G' can be prosecuted

for the offence of conspiracy fixing the period from 01.01.2010 to 01.08.2011, but 'B' to 'G' may not be liable for the individual offences committed by 'A' between 01.01.2010 and 01.04.2010. The following passage from the judgment of the Supreme Court in **State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru [(2005) 11 SCC 600]** will throw light on this aspect.

"We do not think that the theory of agency can be extended thus far, that is to say, to find all the conspirators guilty of the actual offences committed in execution of the common design even if such offences were ultimately committed by some of them, without the participation of others. We are of the view that those who committed the offences pursuant to the conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy; but, the non-participant conspirators cannot be found guilty of the offence or offences committed by the other conspirators. There is hardly any scope for the application of the principle of agency in order to find the conspirators guilty of a substantive offence not committed by them. Criminal offences and punishments therefor are governed by the statute. The offender will be liable only if he comes within the plain terms of the penal statute. Criminal liability for an offence cannot be fastened by way of analogy or by extension of a common law principle."

(emphasis supplied)

From this authoritative pronouncement of the Supreme Court, it is beyond cavil that accused who are not actually involved in the commission of specific offences cannot be convicted for those offences, though they may be convicted for the substantive offence of conspiracy.

85 When once the Court holds that there is *prima facie*

material for conspiracy, Section 10 of the Evidence Act would come

<http://www.judis.nic.in> into play. In fact, for invoking Section 10, *ibid*, it would suffice if the

Court has a reasonable ground to believe that two or more persons

have conspired to commit an offence. Here, it is worth pointing out that the expression "reasonable ground" in Section 10, *ibid*, is used in "singularity" and not in "plurality". In other words, Section 10, *ibid*, does not say "reasonable grounds" but says "reasonable ground". Thus, in this case, we have more than one reasonable ground to believe that the accused had conspired together to commit the offences. When once the Court has a reasonable ground to believe that the accused had conspired, then, **(i)** the act of the three accused staying together in a room at the first floor of "Aeroplane Building" at Palapatti; **(ii)** the purchase of knives (M.Os. 1 and 8) by Santhanam @ Manoj Kumar (A1) from Mohanraj (P.W.19); **(iii)** the enquiry made by Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) with Ajith (P.W.18) as to who were in the house; **(iv)** the presence of Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) near the place of occurrence around 3.30 p.m to 3.45 p.m and they picking up a quarrel with Kathiresan (P.W.20) and **(v)** secreting away of the jewels, are relevant factors qua each of the conspirators, viz., Santhanam @ Manoj Kumar (A1), Kamaraj (A2) and Elangovan (A3).

86

To sum up, the prosecution have proved beyond reasonable doubt that pursuant to the conspiracy, the accused had committed the offences of murders for gain, resulting in the demise of the three hapless women.

87 It is the specific case of the prosecution that Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) entered into the house while Elangovan (A3) was standing guard outside the house. In **Barendra Kumar Ghosh vs. King Emperor [AIR 1925 PC 1]**, while discussing the contours of Section 34 IPC, the Privy Council has quoted John Milton and has held that "*they also serve who only stand and wait.*" Therefore, Elangovan (A3) who was standing guard outside the house is equally liable for the offences committed by Kamaraj (A2) and can be convicted and sentenced with the aid of Section 34 IPC, apart from the substantive offence of conspiracy under Section 120-B IPC. It is trite law that Section 34 IPC is not a substantive charging section, but, a rule of evidence and ergo, the failure of the Trial Court to include Section 34 IPC while framing the charges, will not be a bar for this Court to invoke the said provision for mulcting criminal liability on Elangovan (A3).

SENTENCE:

88 The law on sentencing by the Courts after conviction is passed, has been dealt with by the Supreme Court in **Dagdu Vs. State of Maharashtra [(1977) 3 SCC 68]**. For better clarity, the relevant portion is extracted hereunder :-

"78. [Section 235](#) of the Criminal Procedure Code, 1973 reads thus:

"235. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of [Section 360](#), hear the accused on the

question of sentence, and then pass sentence on him according to law."

The imperative language of sub-section (2) leaves no room for doubt that after recording the finding of guilt and the order of conviction, the Court is under an obligation to hear the accused on the question of sentence unless it releases him on probation of good conduct or after admonition under [Section 360](#). The right to be heard on the question of sentence has a beneficial purpose, for a variety of facts and considerations bearing on the sentence can, in the exercise of that right, be placed before the Court which the accused, prior to the enactment of the Code of 1973, had no opportunity to do. The social compulsions, the pressure of poverty, the retributive instinct to seek an extra-legal remedy to a sense of being wronged, the lack of means to be educated in the difficult art of an honest living, the parentage, the heredity all these and similar other considerations can, hopefully and legitimately, tilt the scales on the propriety of sentence. The mandate of [Section 235\(2\)](#) must, therefore, be obeyed in its letter and spirit.

79. But we are unable to read the judgment in *Santa Singh* as laying down that the failure on the part of the Court, which convicts an accused, to hear him on the question of sentence must necessarily entail a remand to that Court in order to afford to the accused an opportunity to be heard on the question of sentence. The Court, on convicting an accused, must unquestionably hear him on the question of sentence. But if, for any reason, it omits to do so and the accused makes a grievance of it in the higher court, it would be open to that Court to remedy the breach by giving a hearing to the accused on the question of sentence. That opportunity has to be real and effective, which means that the accused must be permitted to adduce before the Court all the data which he desires to adduce on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the Court or he may, on affidavit or otherwise, place in writing before the Court whatever he desires to place before it on the question of sentence. The Court may, in appropriate cases, have to adjourn the matter in order to give to the accused sufficient time to produce the necessary data and to make his contentions on the question of sentence. That, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher court."

89 Now, the core question that needs to be decided is whether the case at hand is one falling under the rarest of rare cases category warranting sentence of death. While the learned counsel for the appellants submitted that the case does not fall under the category of rarest of rare cases as propounded by the Supreme Court,

the learned Additional Public Prosecutor submitted that the crime is a heinous one committed by the accused on three vulnerable women. Further, it is submitted by the learned Additional Public Prosecutor that the accused are habitual offenders, which is evident from the conviction sustained by them which shall be examined hereunder. It is therefore submitted by the learned Additional Public Prosecutor that the accused indulging in similar crime after the commission of the first crime unquestionably led the trial Court to the inference that the accused are beyond reformation and their continuation in the social system would only lead to more similar crimes and considering all the above factors, sentence of death was imposed on the accused and therefore, no interference is called for.

90 In the light of the principles enunciated by the Supreme Court, what is to be decided by us is the nature of punishment to be awarded to the accused. In **Bachan Singh Vs State of Punjab [(1980) 2 SCC 684]**, the Supreme Court held that for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the Court must pay due regard both to the crime and the criminal and what is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated

index of the depraved character of the perpetrator and that is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is cruel and therefore, all murders are act of cruelty. But, such cruelty may vary in its degree of culpability and it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist. The Supreme Court, in the said judgment, held that in the exercise of its discretion, the Court shall take into account the following circumstances, before awarding sentence :-

- (a) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (b) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
- (c) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
- (d) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (c) and (d) above.
- (e) That in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.
- (f) That the accused acted under the duress or domination of another person.
- (g) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

91 In **Machhi Singh & Ors. Vs State of Punjab [1983 SCC**

(Cri) 681], the Supreme Court held that before awarding death sentence, the following questions may be asked and answered as a

test to determine the 'rarest of rare' case in which death sentence can be inflicted :-

(i) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(ii) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

92 The Supreme Court went on to hold that the guidelines which emerge from **Bachan Singh** (supra), will have to be applied to the facts of each individual case, where the question of imposition of death sentence arises. It was further held that in rarest of rare cases, when the collective conscience of the community is so shocked that it will expect the holders of the judicial power-centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded.

93 The tests laid down by the Supreme Court in **Bachan Singh** (supra) have been dealt with in a catena of decisions and the circumstances, which are mitigating and aggravating, based on which sentence needs to be awarded, have been culled out from various decisions and highlighted by the Supreme Court in **Ramnaresh Vs. State of Chhattisgarh [(2012) 4 SCC 257]** and the same are extracted hereunder :-

"76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in *Bachan Singh* and thereafter, in *Machhi Singh*. The aforesaid judgments, primarily dissect these principles into two different compartments - one being the 'aggravating circumstances' while the other being the 'mitigating circumstances'. The court would consider the cumulative effect of both these aspects and

normally, it may not be very appropriate for the court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the court. It will be appropriate for the court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the court as contemplated under [Section 354\(3\) Cr.P.C.](#)

Aggravating circumstances:

- (1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.
- (2) The offence was committed while the offender was engaged in the commission of another serious offence.
- (3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.
- (4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
- (5) Hired killings.
- (6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
- (7) The offence was committed by a person while in lawful custody.
- (8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under [Section 43 Cr.P.C.](#)
- (9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.
- (10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.
- (11) When murder is committed for a motive which evidences total depravity and meanness.
- (12) When there is a cold-blooded murder without provocation.
- (13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances:

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution have brought home the guilt of the accused.

77. While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles

(1) The court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard

to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

60. This Court has consistently held that only in those exceptional cases where the crime is so brutal, diabolical and revolting so as to shock the collective conscience of the community, would it be appropriate to award death sentence. Since such circumstances cannot be laid down as a straitjacket formula but must be ascertained from case to case, the legislature has left it open for the courts to examine the facts of the case and appropriately decide upon the sentence proportional to the gravity of the offence."

94 On the question of striking a delicate balance between the proportionality of crime to the sentencing policy and arriving at the imposition of penalty in rarest of rare cases, the words of Lord Denning have been quoted with approval by the Supreme Court in **Deepak Rai Vs State of Bihar [(2013) 10 SCC 421]**, which are quoted hereunder :-

" The punishment is the way in which society expresses its denunciation of wrongdoing; and, in order to maintain respect for the law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishments as being a deterrent or reformatory or preventive and nothing else. The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrongdoer deserves it, irrespective of whether it is a deterrent or not."

95 In the case at hand, following the principles laid down by the Supreme Court above, this Court has to consider the aggravating and mitigating circumstances before inflicting the sentence of death on the accused. On a consideration of the circumstances, more particularly, the mitigating factors relating to lack of criminal

antecedents or probabilities of the appellant to be a menace to the society, the Supreme Court in **Gurudev Singh vs. State of Punjab [2003 (7) SCC 258]**, has observed as hereunder :-

"... it is indeed true that the underlying principle of our sentencing jurisprudence is reformation and there is nothing in evidence to show that the appellants have been a threat or menace to the society at large besides the FIR regarding the theft of buffalo. It is also true that we cannot say that they would be a further menace to the society or not as we live as creatures saddled with an imperfect ability to predict the future. Nevertheless, the law prescribes for future, bases upon its knowledge of the past and is being forced to deal with tomorrow's problems with yesterday's tools."

96 In **Shankar Kisanrao Khade vs. State of Maharashtra [(2013) 5 SCC 546]**, the Supreme Court has requested the Law Commission of India to examine the imposition of death penalty even in rarest of rare cases. This was referred, whether, as a principle, death penalty can be imposed in any case in which the accused have been found guilty of the charges of murder and which charges and which offences have been found to be falling under the category of rarest of rare cases.

97 While examining the issue of death sentence, the Law Commission of India, in their conclusions, had finally recommended as follows:

"7.2.2 The march of our own jurisprudence – from removing the requirement of giving special reasons for imposing life imprisonment instead of death in 1955; to requiring special reasons for imposing the death penalty in 1973; to 1980 when the death penalty was restricted by the Supreme Court to the rarest of rare cases – shows the direction in which we have to head. Informed also by the expanded and deepened contents and horizons of the right to life and strengthened due process requirements in the interactions between the state and the individual, prevailing standards of constitutional morality and human dignity, the Commission feels

that time has come for India to move towards abolition of the death penalty.

7.2.3 Although there is no valid periological justification for treating terrorism differently from other crimes, concern is often raised that abolition of death penalty for terrorism-related offences and waging war, will affect national security. However, given the concerns raised by the law makers, the Commission does not see any reason to wait any longer to take the first step towards abolition of the death penalty for all offences other than terrorism-related offences.

7.2.4 The Commission accordingly recommends that the death penalty be abolished for all crimes other than terrorism-related offences and waging war.

7.2.5 The Commission trusts that this Report will contribute to a more rational, principled and informed debate on the abolition of the death penalty for all crimes.

7.2.6 Further, the Commission sincerely hopes that the movement towards absolute abolition will be swift and irreversible."

98 On the basis of the guidelines given by the Supreme Court in the judgments referred to above, it is clear that this Court should also consider the mitigating circumstances surrounding the accused. As a matter of fact, even under the Criminal Procedure Code, it had been stated that before entering into the realm of sentence, the accused should be heard. However, when hearing the accused, it must be borne in mind that he is being heard after he is informed that he is found guilty of commission of the offences for which he has been charged. This naturally puts him in an emotional and nebulous situation. It is for that reason that the Supreme Court has advised that the Court should give a reflective time to consider the quantum of punishment.

In the present case, the trial Judge had decided that the accused who are now before us, viz., Kamaraj (A2) and Elangovan

(A3) had committed the offence and that the prosecution had proved the charges beyond all reasonable doubt. Thereafter, the learned trial Judge had examined the nature of the offence and had found that as a fact, Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) had entered into the house identified by Elangovan (A3). Identification plays a very important role since not only, should the object of theft and robbery be accomplished but also that nobody is there inside the house who would probably prevent such robbery from being accomplished. The persons reasonably expected to be present should also be vulnerable to threats and should be of such age and sex that the person(s) gaining illegal ingress into the house, should be able to overcome them to achieve the object of robbery. It would have been very naïve on the part of Elangovan (A3) to have identified the house which had four or five male members who would be in a position to overpower and thwart the attempt of robbery. Consequently, identification of the house involves great preponderance and application of mind. It is this role that Elangovan (A3) played. The facts, as held to be proved, reveal that Santhanam @ Manoj Kumar (A1) and Kamaraj (A2) barged into the house. Elangovan (A3) is to do guard outside.

100 The learned counsel for Elangovan (A3) stated that Elangovan (A3) had not actually committed the offence.

101 We have still found Elangovan (A3) equally guilty of commission of offence of murder of three innocent and vulnerable

ladies belonging to three different age groups, one an old lady, the other middle aged and the other comparatively young and they did not have any chance against two individuals who had armed themselves with the knives which they had specially made "to kill pigs". This itself exposes the attitude of Santhanam @ Manoj Kumar (A1) Kamaraj (A2) and Elangovan (A3). Moreover, the learned trial Judge has also found that Santhanam @ Manoj Kumar (A1), Kamaraj (A2) and Elangovan (A3) had also been found guilty in yet another case of a very similar nature. Subsequent to the commission of the offence which this Court has been considering in these criminal appeals, all the three accused, together with a common intention and common object, had been found guilty of commission of a triple murder for gain in yet another crime registered as Cr. No.618 of 2011 in Vengamedu Police Station, Karur District. That was taken cognizance of, after committal by the Judicial Magistrate as S.C. No.18 of 2012 and the Principal Sessions Judge, Karur, had thought it fit, by judgment dated 10.03.2014 rendered after full trial, to convict the very same accused, viz., Santhanam @ Manoj Kumar (A1), Kamaraj (A2) and Elangovan (A3) of the major offence of murder with a common intention, conspiracy and common object. In that case in which the trial concluded earlier to the conclusion of the trial which is the subject matter of the appeals hereunder, the Principal Sessions Judge, Karur, had thought it fit to give life sentences consecutively. Even before the pronouncement of the judgment in that case, Santhanam @ Manoj Kumar (A1) had died. Consequently, Kamaraj (A2) and Elangovan (A3) were convicted and

sentenced to life imprisonment for the offence of murder. But, the Principal Sessions Judge, Karur, had directed that the three life sentences should run consecutively.

102 One feature which has to be mentioned at this juncture is that as against the said judgment, Kamaraj (A2) alone had preferred a criminal appeal in CrI.A. (MD) No.174 of 2015 before this Court and a Division Bench of this Court had also confirmed that the prosecution had proved the charges of Section 302 IPC as against Kamaraj (A2) and had dismissed the appeal on 27.09.2016 and upheld the conviction and did not interfere with the award of life sentence to run consecutively. Elangovan (A3) had not preferred any appeal. He preferred to abide by the judgment of the trial Court.

103 In the present case, while deciding the sentence as against Kamaraj (A2) and Elangovan (A3), apart from the principles laid down by the Supreme Court, the Additional District and Sessions Judge, Namakkal, had also stated the earlier conviction in S.C. No.18 of 2012 by the Principal Sessions Judge, Karur, as a fact, and thereafter, again, as a reason for imposing the maximum death sentence and had once again relied on such conviction. But, very unfortunately, a copy of the said judgment was not provided to Kamaraj (A2) and Elangovan (A3) and their opinion with respect to such conviction was not sought.

104 Mr. Subash Babu, learned counsel for Elangovan (A3) submitted that in the absence of the Trial Court framing a specific charge with regard to the previous conviction as required under Sections 211(7) and 236 Cr.P.C., this Court cannot take into consideration, the conviction of the accused herein in the earlier case.

105 To appreciate the aforesaid submission of Mr.Subash Babu, it may be necessary to extract Sections 211(7) and 236 Cr.P.C. as under:

"211. Contents of charge:

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

236. Previous conviction:

In a case where a previous conviction is charged under the provisions of sub-section (7) of section 211, and the accused does not admit that he has been previously convicted as alleged in the charge, the Judge may, after he has convicted the said accused under Section 229 or Section 235, take evidence in respect of the alleged previous conviction, and shall record a finding thereon;

Provided that no such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under Section 229 or Section 235."

106 Section 211(7) Cr.P.C. will not apply to the facts of this case, because, it is not the case of the prosecution that since the accused were convicted and sentenced under Section 302 IPC in the earlier case, they have to be *ipso facto* inflicted with death penalty, in the event of their conviction under Section 302 IPC in this case.

107 Sections 211(7) and 236 Cr.P.C. will apply only in cases where the law provides for an enhanced punishment for repeat of an offence by an offender. This can be illustrated by citing the example of Section 303 IPC (which has, of course, been held unconstitutional) which envisages only one punishment, viz., death sentence, for a person under life imprisonment committing an offence under Section 302 IPC. In this case, the provisions of Section 298 Cr.P.C. may apply for proving the earlier conviction and for taking it as an aggravating circumstance for the purpose of imposing death penalty.

108 Be that as it may, when that fact was pointed out to us, we rectified the said error committed by the learned Additional District & Sessions Judge, Namakkal and provided a copy of not only the judgment in S.C. No.18 of 2012 but also the judgment of this Court rendered in the appeal preferred against the judgment in S.C. No.18 of 2012 and called upon Kamaraj (A2) and Elangovan (A3) to attend the Court and saw to it that the copies of judgments were provided to them. They were also provided with a list of cases in which

they had been charged and in some of which, they had been even convicted for various IPC offences. Thereafter, we gave a very meaningful hearing to both the learned counsel for Kamaraj (A2) and Elangovan (A3). At this juncture, without any reservation, we place on record, our deep appreciation for the manner in which Mr. R. Rajasekaran, learned counsel for Kamaraj (A2) and Mr. M. Subash Babu, learned counsel for Elangovan (A3) advanced the causes of their clients.

109 Among the cases in which they had been earlier charged or rather they had an occasion to be involved in conflict with the law, Kamaraj (A2) had been earlier charged and convicted in C.C. No.455 of 2003 under Sections 457 and 380 IPC; in C.C. No.456 of 2003 under Sections 457 and 380 IPC; in C.C. No.457 of 2003 under Sections 457 and 380 IPC; in C.C. No.458 of 2003 under Sections 457 and 380 IPC; in C.C. No.459 of 2003 under Sections 457 and 380 IPC and in C.C. No.460 of 2003 under Sections 457 and 380 IPC, all for a sentence of rigorous imprisonment for a period of two years and all by judgments on the same day, i.e., 24.02.2004 and all by the very same Court, viz., Judicial Magistrate No.I, Puducherry and in the FIRs registered as offences by the Mudaliarpet Police Station in Puducherry Union Territory, except for one case which was registered by Reddiarpalayam Police Station, again, in Puducherry Union Territory. The other strange aspect of the above convictions is that the second and third convictions are with respect to consecutive crime numbers,

viz. Cr. Nos. 72 of 2003 and 73 of 2003. These offences are of the year 2002 and 2003 respectively.

110 Mr. C. Emalias, learned Additional Public Prosecutor had impressed upon this Court the necessity to consider these convictions as an antecedent character and conduct of Kamaraj (A2). The learned Additional Public Prosecutor had further urged that these convictions reflect that Kamaraj (A2) is a history sheeter so far as specialised offences under Sections 457 and 380 IPC are concerned which relate to illegal/forceful trespass and robbery.

111 But, one crucial mitigating aspect in all these cases is that, though Kamaraj (A2) has been convicted for house trespass and robbery and which conviction we cannot examine at present, there had not been a commission of an offence relating to hurt or bodily harm on any individual in those cases. They are offences committed by a person who has committed the offence of robbery but had never thought it fit to even cause harm or at least, simple injury to the victim. Apart from this, from a reading of the charges in the present case and in the Karur case, there appears to have been an unholy nexus and companionship between Santhanam @ Manoj Kumar (A1) and Kamaraj (A2), which had resulted in the commission of heinous offences. Admittedly, Santhanam @ Manoj Kumar (A1) is no more. In this case, when we ask ourselves the question, had Kamaraj (A2) operated alone, would he have committed the offence under Section

302 IPC or murder had occurred owing to his allegiance and companionship with Santhanam @ Manoj Kumar (A1), we do not have a definitive answer. This is a factor to be considered when a further preponderance has to be made whether Kamaraj (A2) deserves death penalty as the only mode of sentencing or whether a chance could be given to him to think over his actions and reform in future. This becomes all the more crucial when we take into account the age and the family circumstances of Kamaraj (A2). We have been informed that in 2011, when the present occurrence took place, Kamaraj (A2) was aged about 32 years and he has a wife, a daughter and a son. His children are young. The impact on the family, in the event of the death sentence inflicted on him being confirmed, would be discussed subsequently.

112 Mr. Rajasekaran, learned counsel for Kamaraj (A2) persuaded us to read the police confession of Kamaraj (A2) in order to show that he did not have intrinsic criminal propensities, but, that he had acted merely as a puppet in the hands of Santhanam @ Manoj Kumar (A1). When we brought to his notice that the police confession is inadmissible under Section 25 of the Evidence Act and Section 162 Cr.P.C. save as otherwise provided under Section 27 of the Evidence Act, he placed reliance on the judgment of a Division Bench of this Court in **In Re: Mottai Thevar [AIR 1952 Madras 586]**, wherein, the Division Bench had relied upon the confession statement of the accused given to the police to give benefits to the accused.

113 A reading of the facts in **In Re: Mottai Thevar** (supra), would show that the accused, after committing the offence, went straight to the police station with the blood-stained spear and there made a clean breast of the offence and this was the first information received in that case. Only in such a circumstance, the bar under Section 162 Cr.P.C. did not apply and the Court used the statement in favour of the accused. The Division Bench which decided **In Re: Mottai Thevar** (supra), had an occasion to deal with another case, viz., **In Re. Vokkaligara Yengtappa [AIR 1952 Madras 535]** - which was decided one month after *In Re: Mottai Thevar (supra)*] wherein, they refused to read the police confession in favour of the accused in view of the bar under Section 162 Cr.P.C. In **In Re: Vokkaligara Yengtappa** (supra), Mack, J., speaking for the Bench, lamented thus:

"12. It is most regrettable in the present state of the law that even a Public Prosecutor although he may know that there is something in a statement made by an accused when examined at the commencement of great help to him, is precluded from bringing it openly to Court's notice by way of evidence. But, this is the present state of the law under Section 162, Criminal P.C. and Sections 25 to 27 of the Evidence Act and until the law is changed, it is extremely difficult to utilise material in a case diary even in favour of an accused person."

In his concurring opinion, *Somasundaram, J.* said:

"13. . . . So far as Sections 25 to 27 of the Indian Evidence Act are concerned, I have already stated in another case, that they only prohibit the use of the confession against the accused and that there is no prohibition of their use in favour of the accused. But as regards Section 162 Criminal P.C., it prohibits the use of the statement made by any person (which includes the statement of the accused) for any purpose. There is, therefore, a prohibition to use the statement of the accused if made in the course of investigation even if it is in favour of the accused. This section needs to be amended so as to enable the statements of the accused to be used if they are in their favour particularly if they happen to be in explanation of the recovery of incriminating articles from their possession."

114 The above legal position was further reiterated by the Supreme Court in **Aghnoo Nagesia vs. State of Bihar [AIR 1966 SC 119]** in the following terms:

"9. . . . It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-section (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of Section 27 of the Evidence Act. The words of Section 162 are wide enough to include a confession made to a police officer in the course of an investigation. . . ."

115 In the Parliament attack case [**Navjot Sandhu @ Afsan Guru** (supra)], an attempt was made Mr. Gopal Subramaniam, Senior Counsel representing the Union of India, to use the police statement of Afsan Guru to prove the names of the slain terrorists who attacked the Parliament and other non *per se* incriminatory facts. The Supreme Court declined to accept Mr. Gopal Subramaniam's submission by placing strong reliance upon the judgment of the Privy Council in **Pullurkuri Kotayya vs. King Emperor [AIR 1947 PC 67]** and the judgment of the Supreme Court in **Himachal Pradesh Administration vs. Om Prakash [(1972) 1 SCC 249]** and held that the police confession can be used only for the discovery of a hitherto unknown fact and nothing else. To a little extent, this position has been watered down by the Supreme Court in its recent judgment in **Mehboob Ali v State of Rajasthan [(2016) 14 SCC 640]**, wherein, the Supreme Court has permitted the usage of

the police confession of an accused for the purpose of identifying the co-accused. That being the law, this Court cannot read the police confession of Kamaraj (A2) that was given by him during the course of investigation, in his favour, ignoring the bar under Section 162 Cr.P.C. and the law laid down by the Supreme Court.

116 Coming to Elangovan (A3), Mr. Emalias, learned Additional Public Prosecutor brought to the notice of this Court that Elangovan (A3) had been involved in three cases, the offences in all of which are gruesome. They all relate to offences under Sections 302, IPC. But, again, a distinction can be made. It had been pointed out that trial is underway before the Additional District Court, Namakkal in S.C. No.104 of 2017 which emanated from Cr. No.132 of 2011 and which was under Sections 302 and 379 IPC registered by Paramathi Police Station, Namakkal District. As stated above, along with Kamaraj (A2), Elangovan (A3) had also been convicted by the Principal Sessions Judge, Karur, in S.C. No.18 of 2012 in Cr. No.618 of 2011, again, under Sections 302 and 380 IPC. That was a case wherein he had been awarded life sentence consecutively against which he did not even prefer any appeal and he seems to have taken it stoically.

117 With respect to the other case in which Elangovan (A3) is facing trial in S.C. No.104 of 2007, the charge sheet was provided to us and the facts reveal that he had an affair with another lady, who was also incidentally married and who interfered with his

marriage with the present wife. Consequently, with that as a motive, he had been charged with the commission of an offence under Section 302 IPC. That trial also is still underway and it would be highly prejudicial to his interest and also equally inappropriate, if this Court were to rely upon a charge levelled by the police as equivalent to a previous conviction which just cannot be. The proof or otherwise of the charges will have to be independently assessed by the Additional District Judge, Namakkal, where the trial is underway and only thereafter, can an opinion be expressed regarding the validity or otherwise of the charges. Till such time, as is always the case, every accused person should be presumed to be innocent.

118 Based on this analysis, we are now left with the offence for which both Kamaraj (A2) and Elangovan (A3) have been convicted by the Sessions Court, Karur, wherein, consecutive life sentences had been awarded and appeal filed by Kamaraj (A2) alone has been dismissed. Elangovan (A3) has not preferred any appeal. While dealing with the appeal in CrI.A. (MD) No.174 of 2015 filed by Kamaraj (A2), this Court had also not examined the fact that Elangovan (A3) had not filed any appeal and had also not examined the necessity of seeking the assistance of the Legal Services Authority to examine whether Elangovan (A3) would require assistance to file a criminal appeal.

119 Be that as it may, life sentences to run consecutively have been held to be unconstitutional by the Supreme Court in **Muthuramalingam and others vs. State represented by Inspector of Police [(2016) 8 SCC 313]**. With respect to the family members of Elangovan (A3), we have been informed that in 2011, when the present offence took place, he was aged 27 years and he has one son.

120 Kamaraj (A2) and Elangovan (A3) are youngsters. The Supreme Court, in the judgments which had been referred to above, has pointed out that the age of the accused is a factor to be considered before imposing or examining the necessity to impose death penalty. We would like to expand the theory a little further.

121 In a referred trial, this Court takes the role of *parens patriae* of the families of both the death row prisoners and the victims. When we look at the present case, Kamaraj (A2) has two children and Elangovan (A3) has one child. Moving away from determining whether the offence falls under the category of "rarest of rare cases" and examining the mitigating circumstances instead of merely stating that the accused are young and that they have young children, as *parens patriae*, the Court cannot keep its eyes blind and say "we have given this particular sentence and thereafter, we have nothing further to do with this case or with the family of the accused and the victims!!". The duty of the Court extends further. We also

would like to ponder that the children of Kamaraj (A2) and Elangovan (A3) are also citizens of this country. This Court functions under the power and right given by the citizens of this country while hearing a criminal appeal to examine the evidence presented before it and also to examine where the family of the accused and the victim would be placed.

122 Viewed from that angle, when there are three young children who have a long future and who have to enter into school and gain education, the question we ask for ourselves is, whether we are over-burdening ourselves by examining whether in the school records of the three children, when a question is asked about their father, would it leave an indelible mark in the minds of the three future citizens that their father had been executed by the orders of the Court or whether as has become acceptable in society that their father is alive but somewhere else and out of accessible reach. We must keep in our mind that this Court must also ensure that these three children, when they grow up and enter into the society, do not have any anger or any reason to wreak vengeance in any manner whatsoever. To this extent, we feel that it would only be appropriate that an alternative to death sentence can be imposed on Kamaraj (A2) and Elangovan (A3). Looking at it from another angle and viewing it from the eyes of Kamaraj (A2) and Elangovan (A3), they would certainly reform themselves or at least, we hope that they would do, in spite of being convicted on the murder of six other Indian citizens.

When they realise that the Court has held that since their children have to live a future, they have been given life sentence and not imposed with death sentence, it would certainly be a very important factor in the minds of Kamaraj (A2) and Elangovan (A3). They may be convicted, but, they are still citizens of this country.

123 We cannot rest with the above analysis alone. In the present case, we are left with a young child whose mother had been murdered, whose grandmother had been murdered and whose great grandmother had been murdered. How is that young child going to view life when she grows up, is another question which this Court has to ponder and reflect. Would that anger in her, boil over against a system which had not imposed death penalty against the persons who have been convicted of the offence?

124 Here, we would like to examine the background of the young unfortunate child Abhinandhini. Abhinandhini hails from a family of doctors. Her father is a doctor. Her mother, who died, was a doctor. Her uncles are doctors and her grandfather is a doctor. Every doctor is in the holy profession of saving lives and not extinguishing lives. She could be taught the value of life and that living a life is worth more than a dead body. She has undoubtedly suffered. We are really pained at the suffering that has been inflicted on her. But, with the circumstances surrounding her life, she would realise that further death would not solve the problem. She can, with inspiration from her

near and dear relatives, distinguish herself in life. Viewed from that angle, she would realise, we hope, that life is very valuable.

125 We are now placed with two weighing scales, the family of the two accused, viz., Kamaraj (A2) and Elangovan (A3), where, there are three children who have a future, on the one hand and the family of the three deceased, on the other, where also, there is one young child who, as well, has a future. If Kamaraj (A2) and Elangovan (A3) are given capital punishment, then, the three children of theirs would have to necessarily and possibly lead an uncertain future. They have to live with the idea that an establishment called "judiciary" had thought it fit to impose capital punishment on their fathers. To young minds, words of robbery, murder and death sentence are meaningless. All they would know is that the Government or the judiciary, through the Government, was responsible for the death of their fathers. Leaving out to society, these three children would be more hazardous than leaving out to society the victim child Abhinandhini who is surrounded by a family of doctors who can very well impress upon her, the value of human life, accepting that though her mother, her grandmother and her great grandmother were dead, the two men who have been found guilty are still alive and are being sufficiently punished not to enter into society to kill more people and be an endanger to the society. This conversely would impress upon her that sufficient restraints placed on the imposition of life sentence of Kamaraj (A2) and Elangovan (A3) would actually be giving life to

other innocent women who are left alone in their house and who would be possible targets of their venture.

126 The period of restraint would have to be examined keeping a few aspects in mind. In the present case, the primary factor is to keep Abhinandhini's age in mind. She was aged about 6 years at the time of the offence in 2011. To repeat, she lost her mother, her grandmother and her great grandmother. There would be simmering anger in her mind whenever she reflects on the personal loss suffered by her for no reason of hers and for no fault on the part of her mother, grandmother or great grandmother. They were equally innocent. They alone were there in the house as they always were, but, on that fateful day, when Abhinandhini came back from school, they were not there to receive her. They were dead. They were dead owing to the acts of horror committed by Kamaraj (A2) and Elangovan (A3). But, equalising anger in her mind is the fact that she comes from a family of doctors and medical practitioners and with their influence, she can, realise that saving life is actually one of the ideals and for which her mother, also a doctor, lived and when her mother judges Abhinandhini, she would also appreciate if Abhinandhini were to uphold the value of life rather than expecting revenge by imposition of death sentence.

127 This leads to us to a further question as to the number of years to which restraint has to be placed on Kamaraj (A2)

and Elangovan (A3). It has to be at least for a period of thirty years till Abhinandhini becomes a woman of 36 years. By that time, hopefully, with the grace of the Almighty and the blessings of her elders, she would have settled down in life and the anger owing to the loss of her mother, grandmother and great grandmother would diminish to a large extent. She might even have a family. This would give her confidence in life and by that time, if Kamaraj (A2) and Elangovan (A3) are released, she would be at peace with herself and would have a future to look forward to with her own independent family. Keeping that in mind, we hold that Kamaraj (A2) and Elangovan (A3) should be restrained for a period of thirty years in prison, without any remission by the State Government on any account.

128 Having stated that, we must now look into the future of the three children of Kamaraj (A2) and Elangovan (A3). In this regard, we would request the District Legal Services Authority of Vellore and Namakkal Districts to work positively with respect to the family of Kamaraj (A2) and Elangovan (A3). The District Legal Services Authority at Vellore and Namakkal Districts are requested to send their para legal workers/legal aid advocates and ensure that the children of Kamaraj (A2) and Elangovan (A3) are placed in schools and imparted education and also more importantly, ensure that the occupation of Kamaraj (A2) and Elangovan (A3) are not insisted by the school authorities. The District Legal Services Authorities may also

lend their services, if the wives of Kamaraj (A2) and Elangovan (A3) are in some way qualified and show them a way in moving forward in life. These positive initiatives taken by the Court with respect to the children and wives of Kamaraj (A2) and Elangovan (A3) would propel Kamaraj (A2) and Elangovan (A3) to reform themselves and when they come out of prison, they would be useful to society at least in extolling virtues of a crime-free life and the punishment which would be imposed by indulgence in crime.

129 Another factor which has to be ensured is that both Kamaraj (A2) and Elangovan (A3) must be confined in two separate Central Jails. The entire nucleus of this case emanated by a conspiracy made out in jail by the three accused. Consequently, it is imperative that any further interaction between Kamaraj (A2) and Elangovan (A3) during the next thirty years has to be totally cut off. This would ensure that they can reflect in solitude over their actions and at the same time, also take solace in the fact that judiciary had not let their family down.

130 The Superintendent of Prisons, Central Prison, Trichy and the Superintendent of Prisons, Central Prison, Coimbatore where Kamaraj (A2) and Elangovan (A3) were lodged from 10.03.2014 onwards, have sent individual reports to the effect that both the said prisoners did not involve themselves in any prison offence and that their conduct inside the prison was satisfactory.

131 The reports of the Central Prison, Trichy and Central Prison, Coimbatore reinforce our conviction that death sentence may not be the appropriate answer and rather, life sentence for thirty years without any possibility of any remission or coming out of jail for any reason whatsoever, could be a more appropriate answer with respect to sentence imposed on Kamaraj (A2) and Elangovan (A3).

132 Consequently, this Court confirms the conviction imposed upon Kamaraj (A2) and Elangovan (A3) under [Section 302](#), but, the sentence of death imposed upon them, is modified to one of imprisonment for life. But, we direct that Kamaraj (A2) and Elangovan (A3) shall not be released unless they complete 30 years of actual imprisonment without any statutory remission or commutation. Such a course has been held to be permissible in **Haru Ghosh Vs. State of West Bengal [(2009) 15 SCC 551]**, on the basis of the law laid down in **Swami Shradhanand @ Murali Manohar Mishra Vs. State of Karnataka [(2008) 13 SCC 767]**, where, the Supreme Court, after considering several cases, held that such a course was permissible.

133 SUMMARY OF CONVICTIONS AND SENTENCES:

KAMARAJ (A2):

| | |
|-----|---|
| I | Convicted for the offence under Section 120-B IPC read with Sections 449, 397 and 302 IPC and sentenced to life imprisonment. |
| II | Convicted for the offence under Section 449 IPC and sentenced to undergo life imprisonment and fine of Rs.5,000/-, in default to undergo one year Rigorous Imprisonment. |
| III | Convicted under Section 392 IPC read with Section 397 IPC read with Section 34 IPC and sentenced to undergo ten years Rigorous Imprisonment. |
| IV | Convicted under Section 302 IPC (3 counts) and sentenced to life imprisonment for each count and fine of Rs.5,000/-, in default to undergo one year Rigorous Imprisonment for each count. |

134 It is made clear that the life imprisonments shall run concurrently. However, the sentence of ten years Rigorous Imprisonment for the offence under Section 392 IPC read with Section 397 IPC read with Section 34 IPC and the life imprisonments shall run consecutively. In other words, Kamaraj (A2) shall first undergo the Rigorous Imprisonment of ten years for the offence under Section 392 IPC read with Section 397 IPC read with Section 34 IPC and thereafter, undergo the life imprisonments concurrently.

ELANGOVAN (A3):

| | |
|-----|--|
| I | Convicted for the offence under Section 120-B IPC read with Sections 449, 397 and 302 IPC and sentenced to undergo life imprisonment. |
| II | Convicted for the offence under Section 449 IPC read with Section 34 IPC and sentenced to undergo life imprisonment and fine of Rs.5,000/-, in default to undergo one year Rigorous Imprisonment. |
| III | Convicted under Section 392 IPC read with Section 34 IPC and sentenced to undergo ten years Rigorous Imprisonment and fine of Rs.1,000/-, in default to undergo six months Rigorous Imprisonment. |
| IV | Convicted under Section 302 IPC (3 counts) read with Section 34 IPC and sentenced to life imprisonment for each count and fine of Rs.5,000/-, in default to undergo one year Rigorous Imprisonment for each count. |

135 It is made clear that the life imprisonments shall run concurrently. However, the sentence of ten years Rigorous Imprisonment for the offence under Section 392 IPC read with Section 34 IPC and the life imprisonments shall run consecutively. In other words, Elangovan (A3) shall first undergo the Rigorous Imprisonment of ten years for the offence under Section 392 IPC read with Section 34 IPC and thereafter, undergo the life imprisonments concurrently.

136 At the cost of repetition, we direct that Kamaraj (A2) and Elangovan (A3) shall not be released, unless they complete thirty years of actual imprisonment without any statutory remission or commutation.

In the result, with the above modification in sentence, the criminal appeals are dismissed. The reference of the learned Additional District and Sessions Judge, Namakkal, is answered accordingly.

(P.N.P., J.) (C.V.K., J.)

25.10.2017

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Index: Yes

Speaking Order: Yes

To

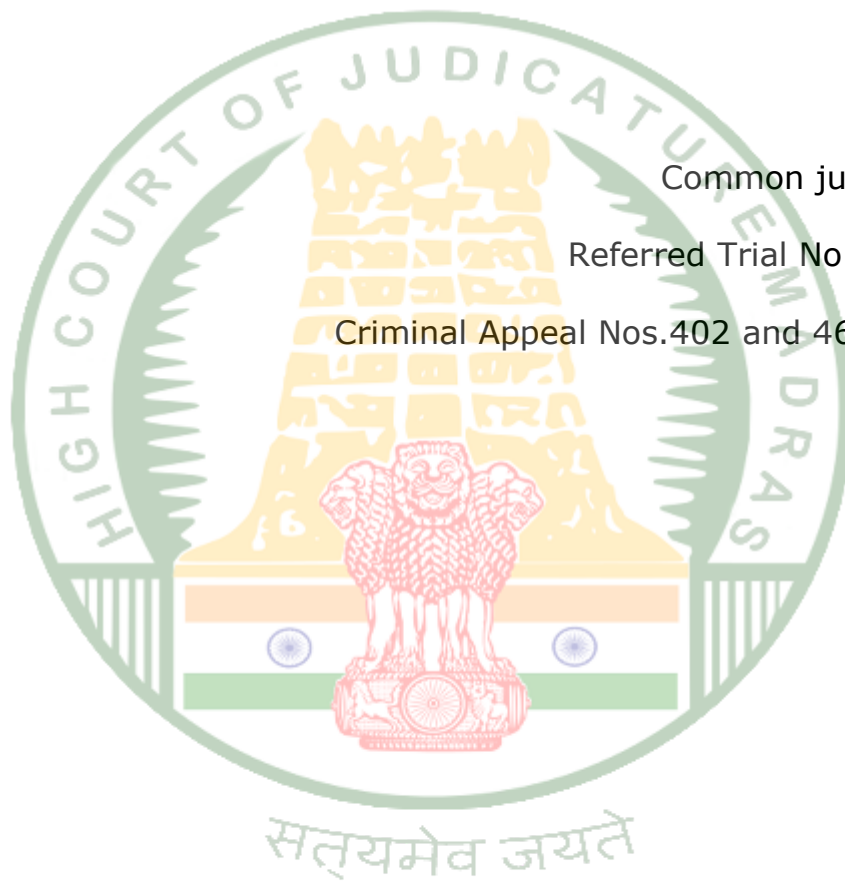
- 1 The Deputy Superintendent of Police
Namakkal
- 2 The Additional District and Sessions Judge
Namakkal
- 3 The Public Prosecutor
High Court of Madras
Chennai – 600 104
- 4 The Chairperson
District Legal Services Authority
Vellore District
- 5 The Chairperson
District Legal Services Authority
Namakkal District

P.N. PRAKASH, J.

&

C.V. KARTHIKEYAN, J.

cad



Common judgment in
Referred Trial No.2 of 2017
and
Criminal Appeal Nos.402 and 465 of 2017

25.10.2017

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