
(2002) 04 MAD CK 0111
In the Madras High Court
Case No : Criminal Appeal No. 51 of 1998

Ramasamy

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-04-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 165

Citation : (2002) 2 LW(Cri) 778

Hon'ble Judges : V.S. Sirpurkar, J;A. Packiaraj, J

Bench : Division Bench

Advocate : K. Manivasagam, for the Appellant; V.M.R. Rajendran, for the Respondent

Final Decision : Allowed

Judgement

1. This is an unfortunate case in which two women met with the death due to Cyanide Poison. The first of the deceased Saroja was a resident in a portion of the house of the other Deceased Egambal at Arantangi Pudukottai Road. They were done to death by administration of Cyanide by the accused/appellant Ramasamy at 12.00 noon on 2.9.95, when he stuffed the said Cyanide powder inside a laddu and gave it to Saroja, claiming it to be Tirupathi Prasadham. Thereafter, the appellant Ramasamy at about 2.30 p.m, put the Cynaide powder in a capsule and gave it to the second deceased, namely Egambal, claiming it to be a medicine and thereby caused the death of the two said women. The charges were framed accordingly and the accused appellant pleaded not guilty and hence the trial.

2. The prosecution case in brief may be stated as follows:

Deceased No.1 Saroja was aged about 60 years and was living with her husband Vaithialingam Asari in a portion of the house at Pudukottai Arantangi High Road, behind VSR Petrol Bunk. The owner of the said house was one Egambal who is aged about 43 and a spinster, living in the other portion of the said house along

with P.W.3 her nephew, a student. The said Egambal was a teacher by profession, in addition to being a Noon-meal organiser. On 1.9.95 the deceased Egambal requested P.W.2 who was in a way related to her and was also a resident of the neighbourhood, to spare some money, so that she could repay her loan, obtained by her from one Ravi. She also stated that she is having Rs.1,700/- with her and that she wanted Rs.1,200/- more in order to pay of the loan. P.W.2-Jothimani replied that he would pay the amount the next evening and on the next evening at about 6.00'o clock when P.W.2-Jothimani went to the house of Egambal apparently to give the money demanded by Egambal, he found the doors opened. But however, there was no signs of any movement, hence he called out the name Mohan Raj, examined as P.W.3, who was also staying in the said house being related to Egambal and was carrying on his studies in Arantangi High School. There was no response. Hence he went to the rear side of the house, where he found the body of Egambal lying down with eucalyptus leaves covering the same. On removing the leaves, he found Egambal to be speechless. He raised an alarm and on hearing the alarm, the neighbours had come. Simultaneously he went to the other portion of the house to enquire about this to Saroja and to his surprise, he found her lying flat speechless. Hence, he informed the neighbours to look after them, while he went in search of a taxi and brought the same with an idea of taking the injured to the hospital. But however, the neighbours informed him that both of them have died. So immediately he went to Neivathali and informed the matter to the relations of Egambal and P.W.3 the nephew of the deceased and all of them came in the taxi back to the village.

3. P.W.4-Rajendran a village menial having come to know from the villagers that two persons had been found dead under suspicious circumstances, went and reported the matter to the Village Administrative Officer, examined as P.W.1 in this case. P.W.1-Athmanathan in turn went to Arantangi Police Station and gave a report to P.W.16-Jothi, the Sub Inspector of Police at 8.30 p.m, who registered it in Crime No.1018 of 1995 for an offence u/s 302 I.P.C. He prepared Ex.P-31, the express report and sent the originals to the Court and the copies thereof to his superior officers.

4. P.W.23-Mahendran, the Inspector of Police on receipt of the express First Information Report went to the scene of occurrence, prepared Observation Mahazars Ex.P-2 and Ex.P-4 relating to Egambal and Saroja respectively, attested by independent witnesses. He also prepared a Rough Sketch Ex.P-38. He seized Blood Stained Cement Karai-M.O.6 earth and M.O.7-Sample Earth under Ex.P-3 mahazar and continued his investigation for holding an inquest over the bodies from 10.00 p.m to 1.00 a.m, during which period, he examined P.W.1, P.W.2, P.W.3 and others. Ex.P-36 is the inquest report prepared in respect of Egambal and thereafter conducted inquest on the body of Saroja of which the inquest report is Ex.P-27. He examined the same witnesses in the said inquest.

5. The further case of the prosecution is that P.W.2 who was doing his Diploma Course in Arantangi Polytechnic used to frequent the house of Egambal and on

one occasion, the deceased Egambal had asked him to get a gold chain and accordingly in the month of May 1995 gave him Rs.9000/- and requested him to get the same. Accordingly, both of them had been to the shop of one Manickavelu examined as P.W.19, who was a jeweler by profession at Arantangi and purchased a gold chain, which has been marked as M.O.9. It is also stated that the deceased Egambal used to be wearing M.O.9 and after her death, the said chain was found missing.

6. The further case of the prosecution is that on 1.9.95 at about 4.00 p.m P.W.6-Chinnathambi by name a resident of the same village saw the accused coming in the opposite direction and since he had seen him earlier on 3 or 4 occasions along with Vaithialingam Asari (the husband of the deceased Saroja), enquired him as to whether Vaithialingam Asari would be coming, for which the accused said that Vaithialingam Asari had gone out of station and that he had asked him to stay there till he arrived. Thereafter on the next evening at about 3.00 p.m when P.W.6 was waiting in the Karaikudi bus stand to go to Karaikudi for purchasing a lorry, saw the accused in the bus stand and enquired him as to where he was about to go, for which the accused replied that he was going to Coimbatore and boarded the bus to Pudukottai. This witness apparently went to Karaikudi and from there to Kerala and returned only 10 days later and on his return he came to know that Egambal and Saroja died and hence he went to the police station and narrated the fact of seeing the accused on an earlier occasion.

7. Meantime, after the respective inquest were over, P.W.23, the Inspector of Police prepared a requisition Ex.P-25 and Ex.P-27 and sent the bodies for postmortem through the constable attached to his department. P.W.10-Dr.Renuka Devi working as a Civil Surgeon in Government Hospital, Arantangi on receipt of the body of the deceased Saroja on 3.9.95, conducted autopsy at about 1.30 p.m on 3.9.95. She found the following symptoms:

Appearances found at the Postmortem:-

Emmaciated eyelids closed. No discharge from mouth & nostrils. No external injuries.

Internal Examination:-

Heart: 180 gms. Congested, Chambers full.

Lungs: Right 500 gm. Left 460 gm. Congested. Haemorrhages present.

Hyoid Bone: intact.

Stomach: Dilated with 100 ml of undigested rice particles.

Liver: 1500 gms. Congested.

Kidney: 120 gm. Congested.

Intestines dilated with foul gas.

Head Membranes: Intact.

Brain: 1200 gm. Congested. No vessel bleeding.

Stomach, Intestine, Liver, Kidney, Sample of blood, Hyoid bone sent for Chemical analysis.

The Doctor was of the opinion that the deceased would have died about 18 - 26 hours prior to postmortem. The viscera has been sent for analysis and after obtaining the analysis report, she had given the opinion Ex.P-26 stating that the deceased died due to Cyanide poison. Ex.P-8 is the Viscera report of the deceased Saroja.

8. P.W.11-Dr.Tamizarasi working as a Civil Surgeon, Government Hospital, Arantangi on 3.9.95 at about 12.30 p.m conducted the autopsy on the dead body of Egambal and found the following symptoms:

Appearances found at the Postmortem:

Well nourished, eyelid closed. No discharge from Mouth or Nostrils. No external injuries.

Postmortem internal examination:

Heart: 150 gms. Chambers full.

Lungs: Right 450 gms. Left 400 gms. Congested.

Hyoid Bone: Intact.

Stomach: Dilated with 5 oz of undigested rice food particles.

Liver: 1400 gms Normal

Kidney: 150 gms. Normal

Intestine: Dilated with foul gas.

Head Membranes: Intact.

Brain: 1400 gms. Normal. No vessel bleeding.

Stomach, Intestine, Liver, Kidney, sample of blood, Hyoid bone sent for chemical analysis.

The Doctor was of the opinion that the deceased would have died about 18 to 20 hours prior to autopsy. The viscera had been preserved and after obtaining the viscera report Ex.P-11, the Doctor has opined in the postmortem certificate Ex.P-28 that the deceased died of Cyanide poisoning. After the postmortem was over, the bodies were handed over the relations of the respective deceased.

9. During the course of the investigation, P.W.23-Mahendran, the Inspector of Police, searched for the accused on 15.9.95, 16.9.95, 17.9.95 and finally on 18.9..95 at about 2.00 p.m he arrested the accused in the bus stop at

Coimbatore in the presence of P.W.22-Palaniappan, surprisingly a native of Neivathali who was eking out his livelihood at Coimbatore.

10. The accused voluntarily gave a statement, the admissible portion of which has been marked as Ex.P-35. The Police officer further seized M.O.27-Cyanide Powder, weighing about 135 gms from the possession of the accused, M.O.10-Alwyn Ladies Watch and cash of Rs.525/- marked as M.O.26 and a receipt Ex.P-32 under mahazar Ex.P.34. The accused took the police party and the said Palaniappan to the shop of P.W.21 Murugan who was running a pawn shop in the name of Tirupathi finance and pointed out to P.W.21 as the person to whom he had pledged the gold chain M.O.9. P.W.21 produced M.O.9 as the one that has been pledged by the accused and has also identified Ex.P-32, the receipt as the one that has been issued to the accused for having pledged the jewel. The police officer seized M.O.9 under mahazar Ex.P-33. On the same night, the police party brought the accused to Arantangi and made arrangements to send him for remand.

11. It is also the prosecution case that P.W.2 went along with Egambal to the shop of Kaveri Murugan jewellery belonging to P.W.19 and purchased M.O.9 for Rs.12,000/- and that after the purchase, the deceased Egambal was wearing the chain. It is also the case of the prosecution that on the day when Egambal and Saroja died, the accused had been to the shop of P.W.18 who was running a medical shop in the name and style of Chola medicines and had purchased certain medicines. After the conclusion of the investigation, the Inspector of Police, laid the final report against the accused for offences u/s 302 and 392 I.P.C.

12. The accused was examined u/s 313 Cr.P.C with reference to the incriminating materials found against him and he denied having committed any offence. Along with the 313 statement, the accused had filed a written statement, in which he has stated that he knew Vaithialingam Asari on account of his business transactions and that he knew Saroja, who was the wife the said Vaithialingam Asari. But he however, claims that he does not know Egambal. On 1.9.95, Vaithialingam Asari requested him to meet him at Aranthangi to pay him his dues and consequently he had been to Aranthangi to the house of Vaithialingam Asari, but however he had not come. Therefore, he stayed there till 2.9.95 till about 12.00 noon and after Vaithialingam Asari came to the house and gave back his dues, he left for his home town. However, he denied having met P.W.6 at the bus stop. He would also deny all the recoveries alleged to have been made from him by the police officer and also denies that the signature found in Ex.P-32 are not his signatures. He further claims that he is innocent and he has been falsely implicated in this case.

13. To establish the case of the prosecution, the prosecution had examined P.W.1 to P.W.23, marked Ex.P-1 to Ex.P-39 and produced M.Os.1 to 27.

14. The specific charge levelled against the accused is that on 1.9.95, he in view of the close relationship with one Vaithialingam Asari (husband of the deceased

Saroja) and with the intention to commit the theft of jewels and cash, come and stayed in the portion of the house belonging to Saroja and in furtherance to the above on the next day i.e on 2.9.95 with the intention to commit the murder of the said Saroja, had administered the Cyanide Poison in a laddu (sweets) at 12.00 noon and offered the same to Saroja, stating that it is a Prasadham from Tirupathi Temple and on Saroja consuming the same, immediately she died and in continuation of the above said incident, he with the intention to commit the murder of the owner of the house by name Egambal and to steal away the jewels, voluntarily went and helped Egambal, who was not feeling well by saying that he would purchase medicines for her and thereby to complete the same, purchased capsules and gave it to her stuffed with Cyanide Powder for consumption to Egambal, who on consuming the same died immediately and that further he took away the gold chain from her neck weighing 3 sovereigns, cash of Rs.1700/- and an Alwyn Watch (Ladies) and thereby committed offences as aforesaid.

15. At the outset we have no hesitation to state that on going through the entire evidence and all other materials placed before the Court for the purpose of framing charges, there does not appear to be any material, which would disclose that the accused had offered Laddu mixed with Cyanide and gave it to Saroja at about 12.00 noon and thereafter at about 2.30 p.m, the accused by way of helping Egambal, who was not keeping good health, offered a capsule stuffed with Cyanide Powder and she at that time, believed the words of the accused and consumed the same, which thereby resulted in the death.

16. On questioning the learned Additional Public Prosecutor as to on what basis, the charges have been framed when there is absolutely no material placed before the Sessions Judge, the learned Additional Public Prosecutor would submit that the above said allegations were found contained in the confession statement given by the accused to the police officer.

17. It is really disheartening to see that the confession statement given by the accused to the police officer alone has been taken for the purpose of framing charges. We also do not hesitate to state that there is absolutely no material to disclose that Saroja met with the death at 12.00 noon, while Egambal died at 2.30 p.m. Be that as it may and we express our displeasure, let us now consider whether the prosecution has established the guilt of the accused beyond all reasonable doubt.

18. In order to establish the guilt of the accused, the prosecution relies only on circumstantial evidence, since admittedly there are no eyewitnesses to the occurrence. The circumstances relied on by the prosecution may be formulated as follows:

- a) The accused who was not a resident of that village was seen in the house of the deceased some time prior to the discovery of the dead bodies;
- b) The accused was seen at 3.00 p.m on 2.9.95 at the bus stop, presumably

immediately after the incident was over;

c) Purchase of M.O.9-Gold Chain, which was found missing from the body of the deceased Egambal;

d) Purchase of medicine and Cyanide, which according to the prosecution were used for administering the same to the deceased;

e) Arrest of the accused and the recoveries of M.O.9-Gold Chain, M.O.10-Alwyn Ladies Wrist Watch, M.O.27-130 gms of Cyanide Powder and Ex.P-32 Gold Chain pledging and sales receipt.

f) Recovery of M.O.9-Gold Chain on the information given by the appellant.

19. The law is well settled that in a case of circumstantial evidence, the circumstances relied on by the prosecution should form a chain and that chain should lead to the one and only conclusion that it was the accused who had committed the crime. In the present case, two women folk were found dead on 2.9.95, admits of no doubt and the Doctors P.W.10 and P.W.11, who have been examined by the prosecution are the persons who conducted the autopsy. They have preserved the Viscera, sent the same for analysis and had obtained the reports of the deceased Saroja and Ekambal under Ex.P-8 and Ex.P-11 respectively and has opined that the deceased died due to consumption of Cyanide. Therefore, there may not be any dispute as to the fact that both the deceased died due to Cyanide Poisoning. But the disputed question of fact is that whether it was Potassium Cyanide or Sodium Cyanide that was administered to the deceased. However, in our opinion and for deciding the guilt of the accused, it may not be necessary for us to go in depth regarding the same. Suffice it to hold that the prosecution has established that both the deceased have died due to Cyanide Poisoning. From the evidence of P.W.12, the Scientific Assistant the Cyanide found in the Viscera is the same as that of the one sent from the Magistrates, which is alleged to have been seized from the accused. But however his opinion and evidence needs to be considered only when the seizure of the Cyanide from the accused is accepted by us. The only question that arises now is whether it was the accused who had administered the same.

20. The first circumstance relied on by the prosecution is that the accused was not a resident of that area, was seen in Aranthangi village on 1.9.95 and on 2.9.95 and more particularly he was found seated on the pial of the house of Egambal on the morning of 2.9.95. In regard to this circumstance, the prosecution sought to rely on the evidence of P.W.3, P.W.6 and P.W.17 to establish the same.

21. P.W.3-Mohan Raj is the nephew of the deceased Egambal, aged about 13 years old at the time of occurrence and was studying in a High School at Arantangi, staying in the house of Egambal. Neyvathali is the native village of P.W.3 and he used to reside in the house of Egambal from Monday to Friday and on Saturday and Sunday, he would go to his parents house at Neyvathali. His

evidence is to the effect that about 4 or 5 times on earlier occasions, he had seen the accused, at the time of his visit to the house of Vaithialingam Asari (husband of the deceased Saroja), who is a resident in the same portion of the house belonging to Egambal. Further on 1.9.95 at about 6.30 p.m, the accused had come to the house of the said Vaithialingam Asari and the deceased Saroja who was aged about 60 years asked him as to where her husband Vaithialingam Asari was, which was replied to by the accused that Vaithialingam Asari had been to Nagapattinam and that Vaithialingam Asari had asked him to stay in Arantangi till he arrives. Hence he stayed there. His further evidence is that P.W.2-Jothimani, who was doing Diploma Course in the Polytechnic at Arantangi, a distant relation of Egambal, had come to the house of Egambal and that Egambal asked him to give him a loan of Rs.1,200/-, since she had already Rs.1,700/- with her and that the said amount has to be parted to one Ravi. P.W.2-Jothimani, replied her that he would bring the money on the following day. Thereafter on 2.9.95, at about 8.30 a.m he again saw the accused, found seated in the pial of the house of Saroja and at about 9.00 a.m, he went away to his parents house, situated at Neyvathali. Meantime it is said that the accused, since he was staying in that house went to the bazaar and purchased vegetables from the shop of P.W.17-Sannasi and gave it to Saroja for cooking.

22. P.W.6-Chinnathambi is a Lorry Broker by profession and his evidence is that on 1.9.95 in the evening at about 4.00 p.m, he found the accused coming in the opposite direction. On his questioning the accused as to where his friend Vaithialingam Asari was, the accused had replied him that he had gone outstation and at any time he is expected. His further evidence is that on 2.9.95, at about 3.00 p.m, when he was about to board a bus to Karaikudi for purchase of lorry, saw the accused at the bus stand and at that time the accused told him that he is leaving for Coimbatore and boarded a bus to Pudukottai. Thereafter, P.W.6 went to Karaikudi and then to Kerala, as he was not able to get a lorry at Karaikudi and returned only about 12 days later. He also stated in his evidence that soon after his return from Kerala and on knowing about the death of Egambal and Saroja, had been to the police station and informed the police that he had seen the accused in the bus stand on an earlier occasion.

23. Now coming to the evidence of P.W.2-Jothimani, who had told Egambal that he would bring Rs.1,200/- the loan amount as requested by her, went to the house of Egambal at about 6.00 p.m on 2.9.95 and found the door to be slightly ajar. On his further entry into the house by giving out a call, there appears to be no response and then he tried by calling out the name of P.W.3-Mohanraj, who stayed in the house of Egambal, which also was of no use. Finally, when he proceeded towards the backyard of the house, he found a body to be covered with eucalyptus leaves. When he obliterated the same, he found Egambal to be lying unconscious. On he raising a hue and cry, neighbours gathered. Thereafter, when he went into the portion of the house belonging to Saroja, to call her, found Saroja also to be lying unconscious. Having thought that they both were alive, he went to bring a taxi to take them to the hospital. But soon after he learnt that

both of them died, he in the same taxi went to Neyvathali and informed the matter to the parents of P.W.3 and brought them to the scene of occurrence.

24. As far as the accused is concerned, he has admitted the fact that he had been to the house of Egambal on 1.9.95 and he was there and even on the next morning, he admits that he had been to the shop of P.W.17-Sannasi and purchased vegetables. Therefore, it may not be necessary for us to discuss the evidence in so far as the evidence of P.W.3, P.W.6 and P.W.17 as it relates to the fact of the accused being in the house of the deceased on 1.9.95 and on the morning of 2.9.95. The evidence of P.Ws.3 and 17 are accepted by the accused. But, the specific case of the accused is that by about 12.00'o clock, Vaithialingam Asari has come and gave his dues and thereafter he left the scene. He would deny having met Chinnathambi examined as P.W.6. The only disputed area as far as this circumstance is whether the accused was there in the Arantangi Bus stand at about 3.00 p.m or not, or whether the prosecution has established that the accused was found at 3.00 p.m.

25. In order to substantiate the above, the prosecution relies solely on the evidence of P.W.6. P.W.6 says that at about 3.00 p.m on 2.9.95, when he was about to go to Karaikudi, he saw the accused at the bus stand and on questioning, the accused informed that he was going to Coimbatore and boarded the bus to Pudukottai. It is the admitted case of the prosecution that in order to go Coimbatore, one has to board a bus which goes to Pudukottai. Therefore, the accused boarding the bus to Pudukottai, does not incriminate him. Further, the evidence of P.W.6, either does not throw light as to the factum of the distance from the house of Egambal to the Arantangi Bus stop, or that the prosecution was able to bring out the same. Therefore, even accepting the evidence of P.W.6 to be true to the effect of seeing the accused in the bus stand, would not in our opinion advance the case of the prosecution. At any rate, his evidence appears to be very artificial, in the sense that he went to Karaikudi for purchase of lorry and since he did not get a lorry there, went all the way to Kerala and even there he did not get a lorry. Then he came back on 15.9.95 and having come to know that Saroja and Ekabal had died, went to the Police station and informed the police that he saw the accused. But as to what had made him to suspect the accused to inform the incident, has not been spoken to by him. Meeting a friend or a known person would not create any suspicion and consequently, we feel that there is no reason as to why he should go and inform the police of having seen the accused there. It is not the case of the prosecution that P.W.6 saw the accused in the house of the deceased, which may at best be stated to raise some suspicion. But that does not appear to be the case. Therefore, we are not in a position to accept the evidence of P.W.6, especially when he has been examined about 13 days later.

26. It is the evidence of P.W.6 that has been relied on by the prosecution for establishing that he was seen in the village after the occurrence. As already stated by us, when the evidence of P.W.6 does not inspire confidence, we are not in a position to hold that the accused was the person who was seen at 3.00 p.m.

27. In the above said circumstance, it is pertinent to note that the accused according to the prosecution was seen at the bus stand at 3.00 p.m, which indicates that the incident was over by 3.00 p.m. But however, the Dr.Tamilarasi who conducted the autopsy of Egambal, examined as P.W.11 states that she conducted the postmortem at 12.30 p.m on 3.9.95 and according to her, the death would have occurred about 18-20 hours prior to autopsy. It is common knowledge that the death which is due to Cyanide Poison is instantaneous and consequently, after the postmortem has been commenced at 12.30 p.m, it would have been over only some time later. At any rate, the time gap given by the Doctor, reveal that the occurrence would have taken place between 4.30 and 6.30 p.m. This runs contra not only to the charge framed against the accused, but also against the evidence of P.W.6. A margin of two hours would normally be given to indicate the time of death. But the specific case of the prosecution here is that at about 2.30 p.m, the occurrence was over and the accused had left the place by 3.00 p.m. Therefore, considering the nature of evidence given by P.W.6, we cannot accept the evidence of the prosecution that the accused was seen anywhere near at 3.00 p.m on 2.9.95.

28. The next circumstance relied on by the prosecution is the purchase of capsule and Cyanide, which according to the prosecution were administered to Saroja and Egambal by the accused. As far as the commission of murder in respect of Saroja is concerned, it is stated that the accused had kept Cyanide inside the laddu and gave it to the deceased. It has been already stated by us that there is absolutely no material to show that laddu was given to the deceased. At this juncture, the evidence of P.W.10, the Doctor who conducted the postmortem on the body of Saroja assumes importance. As stated earlier, consumption of Cyanide would cause instantaneous death and there cannot be any two opinions about it. Further the Doctor who conducted the postmortem was able to see undigested rice particles and there is absolutely no indication that any particles of this laddu was in the stomach or any portion found in the scene of occurrence. The absence of which has been revealed by the Observation Mahazar prepared by P.W.23, the Investigating Officer. Therefore, to begin with there is considerable doubt as to whether laddu was administered at all to the deceased.

29. The next piece of evidence that the prosecution sought to rely is the evidence of P.W.20-Palaniappan, the person who is alleged to have sold Cyanide to the accused. However, he has been treated hostile and his evidence in chief examination would only go to show that his uncle Vaithialingam Asari used to frequent his shop and he had at no point of time brought the accused along with him. He denies having informed the police about Cyanide being given to him. Consequently, there is absolutely no evidence as to whether accused got Cyanide.

30. The next piece of evidence is that of P.W.18-Sathiah, the person from whom the accused is said to have purchased a capsule, in which he had stuffed the Cyanide and administered to the accused. In the first place, as already stated by

us, there is no evidence or any material placed before the Court below even at the time of framing charges to show that the accused had given capsule to the deceased. Be that as it may, the prosecution had examined P.W.18 to show that at about 2.00 or 3.00 pm, on the day when Egambal died, the accused had come to his shop namely Chola medicines and had purchased certain medicines. From this, the prosecution wants us to infer that the accused gave the medicines to the deceased in a capsule form. His evidence in chief or in cross does not reveal that the capsule was purchased by the accused. All that he says is that the accused purchased some tablets on the basis of some prescription. What is more important is as to how he was pressed by the Police is intriguing. This witness clearly says in cross examination that the police did not bring the accused to his shop when he was examined by the Police. Therefore, this does not indicate that the accused would have taken the police to this witness. Moreover, it is the specific evidence of P.W.23-Mahendran, the Inspector of Police that he examined P.W.18 only on 8.11.95, by which time the accused was in judicial custody. Therefore, there is absolutely no material, or in other words any material which discloses as to how this witness was traced. It has also been brought on record by way of contradictions that he had informed the police that he had not seen the person who purchased the medicines properly and consequently, it has been admitted by the Inspector of Police that P.W.18 was not asked to take part in the Identification Parade held by the Magistrate. P.W.18 also admits that he had not informed the police about the name or identity of the persons who had purchased the medicines from his shop and at this juncture, it will not be out of place for us to state that he having been examined on 8.11.95, it is not possible to say that by somebody purchasing medicines on the date when Egambal died, by no stretch of imagination, it means that it was the accused who purchased the medicines. Therefore, his evidence is absolutely worthless, in order to advance the prosecution case.

31. The next circumstance and according to the prosecution, the most important aspect is the arrest and recoveries made from the accused. It is the case of the prosecution that P.W.23 went to Coimbatore, which is admittedly situated about 450 kms away and arrested the accused at the Coimbatore Gandipuram bus stop and when he was about to examine him, P.W.22-Palaniappan, a Cooly who was eking out his life in Coimbatore, surprisingly hailing from Neyvathali Village belonging to P.W.3 and his parents, came out after having his lunch in a hotel and having seen the Police officer examining the accused who was present, joined them. At that time, the accused is said to have voluntarily given a statement, which was reduced in writing and the admissible portion of which has been marked as Ex.P-35. P.W.22 and his friend one Rajendiran were witnesses to the statement. A translation of which reads as follows:

"If you take me to the pawn shop, I would show the person to whom I pledged the jewel and if you take me to Arantangi, I will show the place where the incident had taken place.

It is further stated by the prosecution that P.W.23 seized M.O.10-Alwyn Ladies Wrist Watch, M.O.26-Cash of Rs.525/- and M.O.27-130 gms of white Cyanide Powder under Ex.P.34 mahazar and a receipt marked as Ex.P-32 obtained from Tirupathi Finance. P.W.22-Palaniappan and his friend one Rajendiran had attested the said mahazars.

32. As far as the circumstance with regard to arrest and recoveries are concerned, we see that the prosecution has sought to rely on the evidence of P.W.22-Palaniappan alone to the effect that at the time of arrest he is supposed to have come there and have been a witness to the recording of the statement Ex.P-35 and the subsequent recoveries namely Ex.P-32 and Ex.P-34 mahazars. It is strange as to how the Investigating Officer who belongs to Arantangi Police Station goes all the way to Coimbatore and was able to identify the accused and arrest him. P.W.23 was specifically cross examined and it has been admitted by the said witness that in order to identify he did not take any informer, or the help of any person from Arantangi. Therefore, in our opinion, this itself throws considerable doubt whether P.W.23 was in a position to identify the accused and arrest him.

33. It is the further case of the Investigating Officer, P.W.23 that the accused voluntarily gave a statement in the bus stand itself and it was reduced into writing. Though the contents of the statement cannot be gone into by us, the said statement runs up to 10 pages of full scape paper and in cross examination, he admits that it would take about two hours for the same to be written. Therefore, to imagine that he wrote the statement in the bus stop would appear to be rather too artificial. Further, we are surprised to see the fact that at the time of arrest of the accused at the bus stop, a person who belongs to Neivathali and who was working in Coimbatore to accidentally see them, become a witness to the arrest and recovery, is too strange.

34. It is the specific case of the defence that the statement and everything has been prepared subsequently and the services of P.W.22, the mahazar witness has been obtained on the influence of P.W.2 and P.W.3 and their parents.

We see that there is considerable force in the argument of the learned counsel, since on going through the evidence of P.W.22, it has been elicited that he being a resident of Coimbatore and working there for three years, does not know as to in which place, the Annapoorna Hotel in which he had his lunch on that day was situated. He also admits that he did not know the important places in Coimbatore. Though he says that he was a resident of Door No.211 at Sundaram Street, Coimbatore, he does not know that P.W.20 another witness by name Palaniappan was also a resident of the same address namely Door No.211, Sundaram Street.

35. It is the further evidence of P.W.22-Palaniappan that the accused in pursuance of the statement given by him, took the police party to the shop of P.W.21-Tirupathi Murugan, a pawn broker; that when Ex.P-32 the pawn receipt

was shown to him, he produced the jewel from his shop. P.W.22 has been specifically cross examined and pinned down to say that P.W.21 did not go anywhere else, but produced the jewel namely M.O.9-Gold Chain only from his shop. But as against this, the evidence of P.W.21 in cross examination would establish that since he had no place to keep the jewels in his shop, he had pledged it to another person; that at the time when the investigating officer, P.W.23 had asked for the jewel, he went out of the shop, brought the jewel subsequently and handed over the same to him. . Therefore, if really, P.W.22 had been the person, or if really there had been a seizure in the manner spoken to by the prosecution, there would not have been such variations. What is more appalling is at the risk of repetition, we would say that P.W.22 a resident of Neivathali is the only attesting witness, who has been examined throws considerable doubt.

36. In the above said context, Section 165 of the Criminal Procedure Code declares that the attesting witness should belong to the place, where the seizure has been effected. But here in this case, there is absolutely no evidence on the part of the Investigating Officer that he ever tried to procure any witness from that locality, and in the absence of the same, there is considerable doubt regarding the arrest itself.

37. Now comes the evidence relating to the recovery. The admissible portion of the confession statement does not indicate as to where the material objects were kept or being produced by the accused, except M.O.9-Gold Chain sought to be recovered through P.W.21. As far as the other material objects namely the Alwyn Ladies Watch, the Cyanide Powder and M.O.32-Pawn receipt, it is nowhere stated in the mahazar as to whether the accused was having in his, or in a bag, or in his hand, or for that matter at any particular place, or was he wearing it. All that the mahazar would reveal is that the police officer seized Item No.1-130 gms of White Cyanide Powder to be in a paper packet, Item No.2-A ladies Watch with a steel strap, Item No.3-Currency Notes of denominations amounting to Rs.525/- and Item No.4-Pawn receipt from Tirupathi Finance. The contents as to where they were hidden, or kept, or placed and other details are conspicuously missing. What is more surprising is at the time of seizure of 130 gms of White Cyanide Powder, the admissible portion of the statement Ex.P-35, does not indicate any presence of the White Cyanide Powder at all. AT the risk of repetition we would say that the contents of the the statement would only reveal the accused would show the person to whom he had pledged the chain. Apart from that there is no mention about the availability of the watch or the white powder. Be that as it may, when a white paper has been seized, the police officer who at that time apparently is not aware of what that powder is, whether it is a Talcum Powder, or Heroine Powder or any other substance had written 130 gms of Cyanide. As to how he had come to that conclusion that it is Cyanide, in our opinion, is very strange. This is an yet another circumstance, which would establish that the recovery is a make believe story. What is more strange is that while the incident is said to have taken place on 2.9.95 at Aranthangi, the accused was arrested at Coimbatore at 450 kms away on 18.8.96 i.e about 16

days later and he is alleged to have been in possession of the remains of the Cyanide Powder that had been administered to the deceased. That this Cyanide is presumed to be the remains of the one that has been administered to the deceased has been sought to be proved by the examination of P.W.12 the scientific expert, who had analysed with the viscera of the deceased. We are not able to conceive that the accused would be in possession of the Cyanide, as if to create evidence against himself. This appears to be highly unbelievable.

38. The last of the recoveries is M.O.9-Gold Chain, recovered in pursuance of the statement given by the accused through P.W.21, the pawn broker. The learned counsel would argue that the accused did not produce the chain and that it does not relate to him at all. To establish the same, the learned counsel to begin with pointed out that Ex.P-32 mentions about the mortgagor as Ramkumar, resident of No.24, Raja Street, Ganapathy. But however, the name of the accused herein is Ramasamy and is not a resident of that address.

In this context, the learned counsel would draw our attention to the cross examination of P.W.21, who says that he knows the accused on earlier occasions, since he had been having transactions with them on earlier occasions. Again he has reinforced the fact that on earlier occasions prior to 1995, the accused had pledged the jewels and had received the money and that he knew his name was Ramasamy and he also admits that if any person by name Ramasamy comes and pledges the jewels on a different name, they would not entertain such persons and consequently, the learned counsel would point out that he having known Ramasamy too well, would not have written the name as Ramkumar and give a false address. Therefore, it is highly doubtful according to the counsel that Ex.P-32 relates to the accused. In this context, it is important to note that P.W.23, the Investigating Officer has admitted of not going to the address at No.24, Raja Street, Ganapathy, mentioned in Ex.P-32, as to who was residing there. If really, some person by name Ramkumar was residing, the entire recovery falls to the ground.

39. In addition to the above circumstance, P.W.21 would say that the counter foil Ex.P-32 would be available in his office. However, the Investigating Officer did not ask for the same, nor had he shown the counter foil. In addition to that P.W.21 also says that the amount that had been given to pawner would be entered in the register and however, the said register had not been produced in Court, nor before the Investigating Officer, nor as the Investigating Officer cared to see the register, whether the money has been given to the accused or not.

In this context, it will not be out of place for us to state that the Investigating Officer role is not that of a Post-man, as to just seize the articles and produce it before the Court. Firstly, he has to satisfy himself whether the contents of that document is there or not. In such a case, P.W.23 ought to have necessarily sent the documents which even according to the witness were available and the same would show whether or not the money was paid to the accused. If the same has not been either sent or produced before the Court, an adverse inference has to

necessarily be drawn and we feel that the investigation in relation to this matter appears to be a slip shod.

40. There is considerable doubt with regard to the evidence of P.W.21 to the fact that he being a pawnee himself gives the money to the pawner after deducting interest, would say that he in turn went and pledged the Chain to another shop and when the police had come, he had been to that shop and had obtained the same from them and gave it to the Police. Meantime, the Police is said to have been sitting idle in the shop. It is not known as to why this Pawnee whose business is to earn his income through the interest, has in addition to go and re-pledge the same to another shop owner. What is more strange is that he is not able to remember the person to whom he had re-pledge the jewel and from where he received the same. This appears to be too big a pill to swallow.

41. One other glaring feature which has been brought to our notice is that there are printed matter in Ex.P-32 as "Re-mortgaged Goods" and "Goods Sold". In the present sheet namely Ex.P-32, the words "Re-mortgaged Goods" had been struck off, but the words "Goods Sold" has not been struck off and according to the counsel, this would indicate that it is a sale receipt and not a receipt for mortgaging the jewels. It has also been admitted by P.W.21 that the amount would be given depending upon the purity of the gold and the purity of the gold would be mentioned in the pawn receipt. But however, in the present receipt, there does not appear to be any mention about the purity of the gold alleged to have been pledged by the accused. But what is appealing is that the learned Sessions Judge has not confronted the accused with the signature when he was examined u/s 313 Cr.P.C and consequently, though there is no positive evidence that it was the accused whose signature was found in Ex.P-32, accepting the evidence of P.W.21, this circumstance cannot be considered as it has not been put to the accused in the 313 statement.

42. To disclose whether or not the signature found in the receipt is that of the accused, the Investigating Officer should have sent the same to the hand writing expert, which would be a corroborative piece of evidence to the evidence of P.W.21. But surprisingly or wantonly, the Investigating Officer had not done so and in the absence of any such positive evidence and in view of the unbelievable story put forward by P.W.21, we are not in a position to accept his evidence.

43. In order to see whether there is any proper evidence that M.O.9-Gold chain alleged to have been mortgaged with P.W.21, really belongs to that of the deceased, the prosecution has relied on the evidence of P.W.2. According to the evidence of P.W.2, the deceased Egambal had requested him to purchase her a chain and accordingly, he took her to the friend and placed order and after 15 days later, the said chain was taken delivery by P.W.2 and this women, which she was supposed to be wearing.

44. The learned counsel appearing for the accused would urge before this Court that there is no acceptable evidence that M.O.9 was really purchased through

P.W.2 from his friend. The seller namely friend of P.W.2 was examined as P.W.19-Manickavelu. P.W.2 when cross examined was not able to mention the name of the person. To begin with, he has categorically said that he does not remember the name. However, subsequently, he claimed to say that he was able to remember the same and he had mentioned the name of his friend as Manickavelu, examined as P.W.19.

45. The counsel for the defence would say that it is only because P.W.2 being coached, he has thought about it and stated so at a later stage. However, we are not solely relying on this contradiction alone, but what has been pressed into service, other than this fact by the counsel for the accused is the fact that P.W.2 states that he was given a bill by P.W.19 for the purchase of this and the bill was given to Egambal. But however, P.W.19 categorically denies that he ever gave any bill to P.W.2.

46. Apart from the above, it has also been admitted by P.W.2 that there are no specific identification features in relation to the gold chain. As against this, P.W.19 the seller of the jewel would say that in all the jewels made by him, the initial GRN would be mentioned and in this chain, it does not contain. However he would say that since the hook is missing, he is not in a position to say whether that initials were there or not. Then the question that arises as to how he is able to identify the jewel. Neither the receipt has been produced, nor the identification marks has been mentioned and the prosecution wants this Court to believe that M.O.9-Gold Chain was purchased from P.W.19 by P.W.2 and given to Egambal. In fact, P.W.2 is also not able to say the price for which he had purchased the said jewels. It is not a small article where one is likely to forget that too when he has parted with more than Rs.12,000/-, it is not acceptable to say that he is not aware of the price. However, what is more strange that he has been made to toe in line with the prosecution to the fact of his admission that he was detained in the police station for 2 or 3 days during time of investigation. Though specific suggestion was put that he was detained for 5 days, he denied, but however would admit that he was in the police station for three days and he volunteered to say that not only he was there but also P.W.3 was detained. Therefore, we have no hesitation to say that P.W.2 and P.W.3 apparently were the initial suspects and they were detained in the police station was admitted and there is every scope for us to conclude that they have been detained in the police station only to press them into service.

47. The last of the circumstance though there is no evidence, is the allegation that the accused committed the murder for gain. However, even there we have considerable doubt that whoever has done the murder or caused the death was due to gain or not. Because even according to the prosecution, only Gold Chain-M.O.9 was found missing from the body of Egambal, which itself is doubted. On seeing the photographs which has been marked in this case, taken on the body of Saroja, we are able to see that she was wearing nose rings and metti (silver jewel worn on the toes), and there was no attempt for the accused to have

removed them, nor is there any evidence to show that there was any other theft in the house, except the oral statement of P.W.2 saying that Rs.1700/- was found missing, for which there is absolutely no basis. Further there does not appear to be any evidence of any valuables or bags being ransacked and any indication to reveal that the person who committed the murder was in search of money or valuables. Even according to the prosecution, who ever has done the act, ought to have been in the house even prior to 12.00 noon till 3.00 p.m and consequently, to say that for 3 hours he had just removed the chain alone is rather unbelievable. Therefore, we have no hesitation to say that the recoveries are figured piece of evidence to establish the guilt of the accused. Here It will not be out of place for us to state that M.O.10-Alwyn Ladies Watch, is not a matter which has special identity. It is after all a watch and is available in the market and consequently it has not been identified by any of the prosecution witnesses to say that it belongs to the deceased. Therefore, the recovery of M.O.10, in our opinion would by no stretch of imagination advance the prosecution case.

48. The learned Sessions Judge has stated that the prosecution has established that the accused first administered Cyanide poison to the deceased Saroja mixing it with laddu in the pretext that the laddu was the prasadam of Tirupathi on the basis of a link evidence, which discloses that the accused had purchased some capsule from the shop of P.W.18. We see that there is absolutely no evidence of purchase of any capsule. What is more surprising is that the learned Sessions Judge has incorporated what P.W.18 had stated to the police and has relied on 161 statement. It is surprising that such material should not have been referred to and the basic principle is that a statement to the Police can never be looked into and reliance cannot be placed on it, unless it has been brought on record by way of contradictions.

49. The last of the contention laid by the counsel is that the non-examination of Vaithialingam Asari itself throws considerable doubt in the prosecution case. We wonder as to why Vaithialingam Asari who is none other than the husband of Saroja has not been examined in this case. When a specific question was raised to learned Public Prosecutor with regard to the same, he stated that Vaithialingam Asari though had received summons had absconded. But however, it is strange that he has not been apprehended nor had been examined. We are at a loss to understand as to why the Investigating Officer was not able to procure him and examine him as a witness, which definitely throw light on the specific plea taken by the accused.

50. In the above circumstances, we feel that the prosecution has not come forward with the case beyond all reasonable doubt and consequently, we set aside the conviction and sentence passed by the learned Sessions Judge and acquit the accused. In the result, the appeal is allowed.