

(2013) 06 MAD CK 0286

In the Madras High Court

Case No : Criminal A. No. 556 of 2011

Sardhar @ Sardhar Basha

APPELLANT

Vs

Inspector of Police

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161(3), 235(2), 313
Penal Code, 1860 (IPC) — Section 120(B), 201, 302, 34

Citation : (2013) 3 MLJ(Cri) 350

Hon'ble Judges : V. Dhanapalan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : R.C. Paul Kanagaraj, for the Appellant; V.M.R. Rajendran, Additional Public Prosecutor, for the Respondent

Judgement

V. Dhanapalan, J.—The appellant in this appeal is the 1st accused, who stands convicted in S.C. No. 297 of 2001 by judgment dated 28.3.2011 on the file of the Additional District and Sessions Judge, Fast Tract Court I, Chennai, for the offence under Sections 302, 201, 34 and 120(B) I.P.C. and u/s 235(2) Cr.P.C. and sentenced him to undergo imprisonment for life for the offence u/s 302 I.P.C. and to undergo imprisonment for 7 years, for the offence u/s 201 I.P.C. There is no separate sentence given for the offence u/s 34 and 120(B) IPC. Heard Mr. Paul Kanagaraj learned counsel appearing for the appellant and Mr. V.M. Rajendran learned Additional Public Prosecutor appearing for the State.

2. During trial to prove its case, the prosecution has examined P. Ws. 1 to 13 and marked Exhibits P-1 to P-20 besides marking M.Os. 1 to 6. The case of the prosecution in a nutshell is as follows:

(i) One Ajma was the sister-in-law of A.1, was a resident of Kottakuppam. The deceased Jebrudin and Mujibur Rahman, who were also residents of the same village, used to tease the said Ajma. Later, A. 1 married the said Ajma as second wife and they were living at Kottakuppam. Both deceased continued to tease Ajma and continued to indulge in untoward activities towards her. So A.1 sent his

wife Ajma to Tindivanam. Even thereafter, whenever, Ajma went to Kottakuppam, the deceased repeatedly used to tease Ajma. Thus, enmity arose between A.1 and the deceased Jebrudin and Mujibur Rahman. A.5 is the brother of A.1 and A.2 to A.4 are friends of A.1.

(ii) According to prosecution, on 2.9.2008, all the accused conspired to commit the murder of the said Jebrudin and Mujibur Rahman at the Tasmac shop situated opposite Rajankulam Kushalchand Park in Tindivanam. Accordingly, on 3.9.2008, A.1 to A.3 went to Kottakuppam, while A.4 and A.5 were at Tindivanam. At Kottakuppam, A.1 hired the load auto bearing Regn. No. PY 1P 1231 of Jebrudin for Rs. 350/- to bring an old fridge to Tindivanam. At about 8. p.m. A.1 and A.3 loaded the fridge in Jebrudin's load auto and followed it on a motorcycle to Tindivanam. In the same Auto, his friend Mujibur Rahman accompanied Jebrudin. A.3 phoned up A.2 and asked A.2, A.4 and A.5 to wait for them at the water tank in Salaigramam. At about 10.45 p.m. both the vehicles viz., Auto, driven by the deceased Jebrudin and the motor cycle in which A.1 and A.3 were traveling reached Salaigramam Water Tank.

(iii) At Salaigramam, all the accused took both the deceased to the rear of the water tank with intention to murder them. While A1 scolded them, A4 switched off their phones. Tying up their hands with their shirts, they took them to K.D.R. Casuarina Thoppu in Kidangal lake on the way to Palakuppam. At 1.30 hours, while A4 caught hold of Mujibur Rahman and A.3 and A.5 caught hold of Jebrudin, A.1 caused a cut the front side neck of Mujibur Rahman with knife and A.2 cut the front side neck of Jebrudin with knife and murdered them. All the accused took the said auto to Balaji Petrol Bunk at GST Road in order to destroy the evidence of the commission of the offence.

(iv) On 6.9.2008, upon receiving the complaint Exhibit P-1 from P.W. 1, law was set in motion and a case in Crime No. 825 of 2008 came to be registered by the Sub Inspector of Police, Tindivanam. The printed First Information Report is Exhibit P-15. P.W. 12 is the Sub Inspector of Police, Tindivanam, who registered the complaint, sent the copies of the F.I.R. to the Judicial Magistrate No. 1, Tindivanam.

(v) P.W. 1 is one Dawood who is a resident of Tindivanam and is running a "Briyani shop" there. D. 1-Jebrudin is his wife's elder sister's son. He also knows D.2-Mujibur Rahman who is the friend of D.1-Jebrudin. They both belong to Kottakuppam village. D.1 was riding load auto. On 3.9.2008, a fridge was being transported from A/1's mother-in-law's house at Kottakuppam Village to Tindivanam in D.1-Jebrudin's load auto. D.2 Mujibur Rahman also accompanied Jebrudin to Tindivanam in the said auto. A.1 Sardar Basha and A.3 Prabhakaran followed the load auto in a motor cycle. At about 10.30 p.m. D.1's father Jamaludin, P.W. 3, called up Jebrudin in his mobile and asked him about his whereabouts. D.1 told him that he would return after unloading the goods at Tindivanam. Till 1.00 a.m. in the wee hours of 3.9.2008, since D.1 did not return home, P.W. 3 called up his phone which stood switched off. At about 11. a.m. on

3.9.2008, P.W. 3 called up P.W. 1 and informed him that his son had not returned home and that he received information that the load auto is stationed near Balaji Petrol Bunk at Tindivanam. When P.W. 1 went to that place, the auto alone was there and no one was available. The Registration number of the said auto is PY 1B 1231. P.W. 1 searched for Jebrudin-D.1 and Mujibur Rahman-D.2 nearby. He searched in many places including their relative's houses. But, they were not there. P.W. 1 went and informed the police station. Thereafter, on 6.9.2008 at about 4. p.m. P.W. 1 got a call from the police people stating that two decomposed dead bodies are lying near the Tindivanam Kidangal Lake (Washermenpet) and requested him to come and see. P.W. 1 went there along with his brother Abdul Razak, P.W. 9. Police personnel were present there. On seeing both the dead bodies, P.W. 1 identified them as that of Jebrudin-D.1 and Mujibur Rahman-D.2. Then he went to the police station and lodged a complaint, which is Exhibit P.1. Both the dead bodies were removed to the mortuary at the Government Hospital, Tindivanam. The next day, police enquired him. After inquest, the dead bodies were handed over to the relatives. Before that, during inquest P.W. 1 was also present. The load auto was seized by police, which is M.O. 1.

(vi) P.W. 2 is the Village Administrative Officer of Kidangal Village at Tindivanam at the relevant point of time. He had deposed that on 6.9.2008, when he was at his office, he received a phone call from the Inspector of Police, Tindivanam, stating that two dead bodies are lying near Kidangal lake. P.W. 2 went to that place immediately, along with his assistant Sivamurthy. There, at Kidangal lake near K.D.R. Casurina Thoppu at the east, two male dead bodies were lying with multiple injuries in the bodies and injuries in the neck. Police personnel were there. He informed the police that both the male, lying dead, does not belong to Tindivanam locality. Police seized a black colour chappal and the driving licence of Jebrudin from that place, under a cover of mahazar Exhibit P-4 in which P.W. 2 and his assistant signed as witnesses. Police prepared the Observation Mahazar, Exhibit P-2, which was witnessed by P.W. 2 and his assistant. They also signed in the seizure mahazar, Exhibit P-3, prepared while taking the blood stained earth and sample earth, as witnesses. Then the dead bodies were sent to Government Hospital, Tindivanam. The seized chappal is M.O. 2 and the driving licence is M.O. 3. Again, on the request of the Inspector of Police, Tindivanam, on 8.9.2008, P.W. 2 and his assistant Sivamurthy, went to Devanur Junction around 11.00 a.m. in the morning, where they witnessed the arrest of A. 1 and A.2 by the police. Police personnel recorded the voluntary confession statement given by A.1 and A.2 separately. P.W. 2 and his assistant attested them. A. 1 and A.2 had stated in the voluntary confession statement that they would identify the place where they had hidden the weapon used for commission of the offence. Accordingly, they were taken to that place where the dead bodies were found. There, from a bush A.1 and A.2 produced a knife individually, which were recovered by the police under a cover of mahazar. The admissible portion of the voluntary confession statement in respect of A.1 is Exhibit P-5 and in respect of

A.2 is Exhibit P-6. The seizure mahazar in respect of the knives is Exhibit P-7 and the seized knives are M.O. 4 and M.O. 5. Thereafter, the accused were taken by the police to the water tank near Salaigramam where they produced the Black and Bluish Hero Honda Motor Cycle, M.O. 6, which was seized by the police, under Exhibit P-8 and witnessed by P.W. 2 and his assistant. Police enquired them.

(vii) P.W. 3-Jamaludin, is the father of D. 1 Jebrudin. He would depose that he is a resident of Kottakuppam and an auto driver by profession. He has three daughters and one son, by name Jebrudin. At Kottakuppam his mother-in-law's house is just opposite to A.1's mother-in-law's house. On 3.9.2008 at about 7.30 p.m. he had been to his mother-in-law's house. There, his son Jebrudin informed him that he is taking the fridge from A.1's mother-in-law's house to A.1's house at Tindivanam in his load auto. D.2 Mujibur Rahman, who is a friend of D.1, was also in the auto. When the auto left that place, A.1 and A.3 followed it in their motor cycle. Till 11.00 p.m. since they did not return from Tindivanam, he called up his son and Jebrudin informed him that they would return after unloading the refrigerator at Tindivanam. When P.W. 3 called him up at 1.00 a.m., the phone was switched off. Since his son did not return, next day morning he enquired at the load auto stand. At that time, he was informed that their load auto is standing near the Petrol Bunk at Tindivanam-Chennai High Road. He informed P.W. 1 about this and asked him to enquire about Jebrudin. P.W. 1 in turn informed P.W. 3 that though the load auto is stationed at that place, there is no information about Jebrudin and his friend. Since, P.W. 3 was taking school children in his auto, he dropped those children at 3.00 p.m. and came to Tindivanam at 4.00 p.m. He along with P.W. 1 went to the place where their auto was standing and informed Police about this and took the auto. Then for the next two days they searched for both the deceased at Tindivanam. Since they could not find them, he went back to Kottakuppam. On 6.9.2008, around 4.00 p.m. P.W. 1 called him up and asked him to come to Tindivanam immediately and I came and, saw the dead bodies of Jebrudin and Mujibur Rahman at the Government Hospital. After post mortem, the dead bodies were handed over to them for funeral. Police enquired him.

(viii) P.W. 4 is the Doctor who conducted post mortem on the dead body of D.1 Jebrudin, which was identified by the Head Constable P.W. 11, on 7.9.2008. She commenced postmortem at 12.30 p.m. She had stated that the body was in a decomposed state. She found various injuries on the dead body as noted by her in Exhibit P-9, the Post Mortem certificate. The Doctor was of the opinion that the deceased would appear to have died of hemorrhage and irreversible shock due to the injuries to neck vessels and multiple soft tissue injuries about 3 to 5 days prior to autopsy. She is the same Doctor who conducted post mortem on the dead body of D.2 Mujibur Rahman, on 7.9.2008, which commenced at 1.45 p.m. She had stated that the body was in a decomposed state. The injuries noted by her are found in Exhibit P-10, the Post Mortem Certificate. The Doctor had opined that D.2 would have died due to the injuries caused to the neck vessel, over

bleeding and shock, 3 to 5 days prior to autopsy. As both the Post Mortem Reports, Exhibits P-9 and P-10 are in English, we do not propose to restate the symptoms noted therein once again in this judgment to save time.

(ix) P.W. 5 is the Scientific Assistant Grade II, Villupuram, who analysed the internal organs of both D.1 and D.2, which were subjected to chemical analysis. The Chemical Analysis Report in respect of D.1 is Exhibit P-11 and in respect of D.2 is Exhibit P-12. P.W. 6 is the brother of Mujibur Rahman-D.2. He is a car driver by profession, who works in Kuwait. When he had visited his hometown Kottakuppam on leave on 3.9.2008, his brother Mujibur Rahman had gone for prayer at 7.30 p.m. Till 10.00 p.m. in the night, since he did not return home, P.W. 6 called him up in his phone. D.2 told him that he had accompanied his friend Jebrudin in his load auto to Tindivanam and after unloading the fridge at A.1's residence they shall return. Again at 12. in the midnight when P.W. 6 called up, D.2's phone was switched off. Since his brother did not return home, he enquired all his friends. But there was no information. Around 3.00 p.m. some one informed him that the load auto which was used to shift the fridge is stationed near the petrol bunk at Tindivanam. He immediately rushed to Tindivanam. There he saw Jebrudin's father also searching for his son. They informed the Tindivanam Police Station. Again they started searching. Since no information was forthcoming, he returned to Kottakuppam. On 6.9.2008 around 5.00 p.m., Jebrudin's father called him and asked him to come to Tindivanam Police Station and then he was asked to go to Government Hospital. There he saw the dead body of his brother Mujibur Rahman D.2 at the mortuary. The body was in a decomposed state. Police enquired him. He told them as to what he know.

(x) P.W. 8 Ajma turned hostile. P.W. 9 is one Abdul Razack. He owns a tea shop at Tindivanam. His evidence is to the effect that on 2.9.2008, around 7.00 p.m. he went to a Tasmac shop near Rajankulam at Tindivanam. There he saw all the five accused. They did not see him. At that time, A.1 told the other accused that his wife Ajma is being teased by Jebrudin and Mujibur Rahman and that nothing could be done to them at Kottakuppam; that he would some how bring both of them to Tindivanam and that if all of them could co-operate they can finish off both of them. After hearing this, P.W. 9 returned home. On 6.9.2008, on being informed that two dead bodies are lying at Kidangal lake, he also went along with others. There he saw the two decomposed bodies of Jebrudin and Mujibur Rahman. The next day, he informed police about what he knows. Police enquired him.

(xi) P.W. 10 is the Scientific assistant who speaks about the Chemical Reports, Exhibits P-13 and P-14. P.W. 11 is the Head Constable who speaks about handing over the dead bodies for Post Mortem, subjecting the seized articles for chemical analysts and handing over the inner parts of the dead bodies for obtaining Viscera report. P.W. 12 is the Sub Inspector of Police, who received the complaint from P.W. 1, registered the same in Crime No. 825 of 2008 and prepared First

Information Report Exhibit P-15. He also speaks about sending the printed copies of the express First Information Report to the Judicial Magistrate No. 1, Tindivanam.

(xii) P.W. 13 is the Inspector of Police, Tindivanam, at the relevant point of time. He had deposed that on 6.9.2008, around 5.30 p.m. on being informed that a case in Crime No. 285 of 2008 had been registered by the Sub Inspector of Police, he took up the investigation. He informed the Village Administrative Officer and his assistant, over phone, to come to Kidangal lake. When he went to Kidangal lake at about 5.45 p.m., they were present there. There, to the east of K.D.R. Casurina Thoppu, in the bush, two male dead bodies were lying. He prepared the Observation Mahazar and rough sketch, Exhibit P-16 in the presence of witnesses. He called the photographer to take photos of the dead bodies. P.W. 1 who was present there identified the dead bodies as that of Jebrudin-D.1 and Mujibur Rahman-D.2. From that place, he seized a chappal-M.O. 2 and a driving licence (in the name of Jebrudin)-M.O. 3, under a cover of mahazar in the presence of witnesses. Around 6.45 p.m. from the same place, he seized the blood stained earth and sample earth under a cover of mahazar. He sent both the dead bodies to the mortuary at Government Hospital, Tindivanam, through a police constable. He enquired P.Ws. 1 and 2 and recorded their statements. He returned to the Police Station and sent the case properties to the Court.

On 7.9.2008, he went to Government Hospital, Tindivanam, along with P.W. 11-Head Constable, where he conducted inquest over the dead body of Jebrudin in the presence of Panchayatdars and prepared Exhibit P-17, the Inquest Report. Thereafter, in the presence of very same witnesses, he also conducted inquest over the dead body of Mujibur Rahman and prepared Exhibit P-18, the Inquest Report. Both these inquest were conducted between 6.00 a.m. and 10.00 a.m. on 7.9.2008. He gave the requisition for conduct of post mortem on both the dead bodies and enquired other witnesses. On 8.9.2008, upon receipt of information, P.W. 13 went to Devanur Junction. Before that, over phone, he had asked the Village Administrative Officer and his assistant to come to that place. At Devanur Junction, P.W. 13 arrested the four accused present there, who were identified by Sivamurthy, the assistant of the Village Administrative Officer. A.1 and A.2 gave a voluntary confession statement separately, the admissible portion of which is Exhibits P-5 and P-6 respectively. Pursuant to the same, on being produced by A.1 and A.2 respectively, M.Os. 4 and 5 came to be recovered from a bush at K.D.R. Casurina Thoppu at Kidangal lake, in the presence of witnesses. The accused also identified the place of occurrence. Thereafter, A.1 took them near Hallo Water Company and produced the Hero Honda motor cycle which was used for the occurrence. That motor cycle did not bear any registration number. P.W. 13, on inspection, found that the Chasis number of that vehicle is MTL JA 5 EE 89 E 5251 and Engine No. is JA 5 EA 89 E 5021 and seized the same under a cover of mahazar, attested by witnesses. Then he returned to the police station and subjected the accused to judicial custody by producing them before Court.

He also sent the case properties to Court.

(xiii) On 9.9.2008, P.W. 13 gave a requisition to the Government Hospital, Tindivanam, to send the preserved Viscera and hyoid bones of both the deceased to chemical laboratory. On 31.10.2008, on being produced by one Hussain, P.W. 13 recovered the load auto which was used by Jebrudin and Mujibur Rahman to transport the fridge and sent it to Court. He received Exhibits P-19 and P-20, Hyoid bone report of Jebrudin and Mujibur Rahman and the Post Mortem Certificates Exhibits P-9 and 10 respectively. After completing further investigation, he filed the final report in Court after obtaining the opinion from the Public Prosecutor. P.W. 13 had also stated that during enquiry, P.W. 8 Ajma had told that she had informed her husband A.1 about the act of Jebrudin and Mujibur Rahman teasing her.

3. When the accused were questioned u/s 313 of Cr.P.C. on the basis of the incriminating materials brought against him by the investigating agency, they denied each and every circumstance as false. They neither produced any documentary evidence nor examined any witness on their side. As already stated, the learned trial Judge, found A.1 and A.2 guilty of the offence under Sections 302, 201, 34 and 120(B) I.P.C. and u/s 235(2) Cr.P.C. and sentenced them to undergo imprisonment for life for the offence u/s 302 I.P.C. and to undergo imprisonment for 7 years, for the offence u/s 201 I.P.C.

4. Mr. R.C. Paul Kanagaraj, learned counsel appearing for the appellant would attack the case of the prosecution on three grounds. The first and foremost ground is that Exhibit P-1 complaint could not have come into existence in the manner and at the time alleged by the prosecution. He would contend that the complaint alleged to have been given by P.W. 1 on 6.9.2008, is not the real complaint and it is only a statement u/s 161(3) Cr.P.C. and therefore, if this is accepted, then the whole case of the prosecution falls to the ground. It is next submitted that there is no eye witness to the occurrence and that the prosecution's case is purely based on circumstantial evidence and thirdly, he would contend that there are so many missing links in the prosecution theory and therefore, the accused is entitled to the benefit of doubt. He also contended that, apart from the evidence of P.W. 2, the V.A.O., the prosecution theory is based heavily on P.W. 9's evidence as to the motive and conspiracy being formed by the accused on 2.9.2008 at the Tasmac shop to murder the deceased and as P.W. 9 is thickly related to the deceased, he is an interested witness and hence, the trial Court was wrong in relying on his evidence to arrive at a conclusion that the accused had planned the murder of both the deceased. Further, in elaborating his points, the learned counsel took us through the entire material records and submitted that according to the Investigating Officer, only after the arrest of the accused on 8.9.2008 at 11.30 a.m. at Devanur Junction, the two knives used by A. 1 and A.2 were recovered whereas the Inquest Reports, Exhibits P-17 and P-18, which came to be recorded after conduct of inquest on 7.9.2008 from 6.00 a.m. and 10.00 a.m., contains the motive for the commission

of offence and the weapons used for the same and, therefore, the manner in which the deceased were done to death is not proved by the prosecution.

5. We have heard Mr. V.M.R. Rajendran, learned Additional Public Prosecutor on all these points as well. He would state that though P.W. 9 is an interested witness, he speaks only about the motive and conspiracy and therefore, it cannot be contended that the prosecution has based its whole case on circumstantial evidence and therefore, the conviction and sentence imposed by the Trial Court should be upheld by this Court. He also adds that P.W. 2, the Village Administrative Officer, is a Government Servant and is not an interested witness and hence, his evidence as to arrest and recovery had been taken note of by the trial Court rightly.

6. The complaint, Exhibit P-1, in this case is shown to have been received at 17.00 hours on 6.9.2008 from P.W. 1. Post Mortem on both the dead bodies was conducted on 7.9.2008 and the post mortem Doctor, P.W. 4 had opined that both the deceased appeared to have died 3 to 5 days prior to autopsy and it is also her evidence that both the dead bodies were found in a decomposed state. Admittedly, both the deceased were seen by P.W. 3, father of D.1, on 3.9.2008 while they were loading the fridge in the load auto to proceed to Tindivanam. Therefore, in all probability the occurrence would have taken place in the night of 3.9.2008 and the early hours of 4.9.2008. Now the question that looms large in our mind is as to what happened between 4.9.2008 and 6.9.2008 evening till Exhibit P-1 came into existence. It is the strong case of prosecution, through the Investigating Officer, that after the dead bodies were found at Kidangal lake, P.W. 1, who was present at the place, identified the dead bodies as that of Jebrudin and Mujibur Rahman and that is how, the complaint Exhibit P-1, came to be lodged at Tindivanam Police Station at 17.00 hours on 6.9.2008. With this point in our mind, we looked into the evidence of P.W. 3 Jamaludin, father of D. 1-Jebrudin. He had categorically stated that from the early morning of 4.9.2008 he had been searching for his son-Jebrudin as he did not return home the earlier night; he came to know that the load auto is stationed at Tindivanam; he informed P.W. 1 and requested him to search at Tindivanam; P.W. 3 himself came to Tindivanam at 4.00 p.m. and informed the police about this. Similarly, the evidence of P.W. 6, brother of D.2-Mujibur Rahman, is also to the effect that he also came to Tindivanam on 4.9.2008 in search of his younger brother; there he saw P.W. 3 searching for his son Jebrudin; both of them informed the Roshanai and Tindivanam Police Station; they still searched and since no information was forthcoming they left for Kottakuppam. But, unfortunately, these two complaints, probably registered as "man missing" complaints, did not surface at all. There is complete silence in the whole prosecution theory about these two complaints. Thus, on a perusal of the materials brought on record, we find force in the contention of the learned counsel appearing for the appellant/first accused that Exhibit P-1-the complaint, could not have come into existence in the manner and at the time alleged by the prosecution.

7. Now, we shall take the other two contentions of the learned counsel for the appellant together. At the threshold, it is to be noted that there are no eye witnesses to the alleged occurrence and the prosecution case entirely rests on circumstantial evidence.

8. In *Hanumant Vs. The State of Madhya Pradesh*, the Supreme Court observed that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

9. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, the Apex Court, while dealing with circumstantial evidence, has held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea and that the conditions precedent before conviction could be based on circumstantial evidence must be fully established. The said conditions are:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must or should" and not "may be" established.

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

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

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

10. In *C. Chenga Reddy and Others Vs. State of Andhra Pradesh*, the Supreme Court observed that in a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

11. The Supreme Court, in the case of Krishnan Vs. State represented by Inspector of Police, , having analysed the earlier decisions has observed that, bearing in mind the principles of law enunciated by this Court and on scrutinising and examining carefully the circumstances appearing in that case and considering all the material evidences and testimony it must be held that the circumstances from which an inference of guilt is sought to be drawn should be of definite tendency unerringly pointing towards guilt of the accused and if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and that the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused.

12. In the case on hand, it is seen that the trial Court has found the accused guilty based only on the evidence of P.W. 1, Dawood, P.W. 2-the V.A.O. and P.W. 9-Abdul Razack. Though none of them are eye witnesses to the occurrence, the Trial Court, has based on the evidence of P.Ws. 1 and 9 for the purpose of motive and conspiracy while it relied on the evidence of P.W. 2 for the arrest and subsequent recovery thereof. In that context, when we go through the evidence of P.Ws. 1 and 9, it is seen that not only P.Ws. 1 and 9 but P.W. 3, father of Jebrudin, are thickly related to each other and that is how P.Ws. 1 and 9 knows Jebrudin and his friend Mujibur Rahman. Both P.W. 1 and P.W. 9 had categorically admitted in their chief examination that they went and saw the two decomposed dead bodies in Kidangal lake and identified them to be that of Jebrudin and Mujibur Rahman. When such is the case, we do not understand as to why P.W. 9 should keep quiet after overhearing the alleged conspiracy said to have been hatched by all the accused together in the Tasmac shop on 2.9.2008, to finish off both Jebrudin and Mujibur Rahman. Not only that, P.W. 9 has admitted in his cross examination that he had neither informed police about this nor warned anybody. It is unusual for a person to have kept quiet without even warning the persons about the talk going on to assault them, that too when he knows them very closely by name. This leads us to doubt the evidence of P.W. 9 in its entirety. As to the credibility about the evidence of P.W. 2, the V.A.O., as rightly pointed out by the learned counsel appearing for the appellant, the trial Court has believed the evidence of the V.A.O. about the alleged arrest and recovery thereof on 8.9.2008. Whereas, both the Inquest Reports, which are dated 7.9.2008, contains the motive and the weapon used, etc.. The other material which creates doubt in our mind about the arrest of the accused is one found in the evidence of P.W. 1 in cross, wherein he had deposed that on 7.9.2008 morning around 8.00 a.m. when he went to the Police Station he saw all the accused being retained there and that he was in the police station for half an hour. This piece of evidence also creates doubt about the time in which the accused were arrested by the police.

13. If the above principles are applied to the present case, the circumstances shown by the prosecution through three witnesses viz. P.Ws. 1, 2 and 9, would

not give a complete chain to arrive at the conclusion that the accused was guilty of the offence charged. So, such a circumstantial evidence, on the above cardinal principle, could not give any strength to the case of the prosecution and ultimately, it goes to the benefit of the accused.

14. Thus, considering all the above circumstances and on independent analysis of the entire evidence on record, we find that the prosecution has failed to prove the charge of murder of the deceased against A. 1 beyond all reasonable doubt. Having given our careful consideration to the submissions made by the learned counsel for the parties and in the light of the evidence discussed above and tested in the light of principles of law highlighted above, it must be held that the evaluation of the findings recorded by the trial Court suffers from manifest error and improper appreciation of evidence on record. In the result, this criminal appeal is allowed. The conviction and sentence imposed on the appellant/accused by the Trial Court, are set aside. He is acquitted of the charges levelled against him. He is directed to be set at liberty forthwith unless his custody is required in connection with any other case. The bail bond if any executed by him shall stand cancelled.