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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.02.2023

PRONOUNCED ON : 02.06.2023

CORAM

THE HONOURABLE Mr. JUSTICE M.S.RAMESH

AND

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

Crl.A.(MD).Nos.228, 230, 232, 233, 515, 536 and 747 of 2022

Crl.A(MD).No.228 of 2022

Yuvaraj .. Appellant/
Accused No.1

Vs.

1.State rep. by
The Additional Superintendent of Police
CBCID, Namakkal District.

2.The Inspector of Police
CBCID, Namakkal District.
(In Cr.No.2/2015) .. Respondents/Complainants

3.Tmt.V.Chitra
W/o.Venkatachalam ..Respondent/Defacto Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., r/w 14A(1) Sc/ST Act, to call for the records relating to the judgment passed in Spl.SC.No.31 of 2019 dated 08.03.2022, on the file of the III Additional District and Sessions Judge, [Special Court for SC/ST Act Cases (PCR)] Madurai and set aside the same and acquit the Appellant/Accused No.1 from all the charges levelled against him.

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For Appellants :

Crl.A(MD).No.228/2022 :	Mr.Gopalakrishna Lakshmana Raju, Senior Counsel for M/s.Rishwant S.G.L, for A1
Crl.A(MD).No.230/2022:	Mr.A.Ramesh, Senior Counsel for Mr.C.Arun Kumar and Mr.Senthil Kumar - for A.2 and A.3
Crl.A(MD).No.232/2022:	for Mr.R.Navaneethaakrishnan - for A.13 and A.14
Crl.A(MD).No.233/2022:	Mr.ARL.Sundaresan, Senior Counsel for Mr.KMC.Arun Mohan - for A.8 Mr.S.Ashok Kumar, Senior Counsel for Mr.M.Jagadeesh Pandian - for A.9 and A.10 Mr.N.Anandha Padmanabhan, Senior Counsel for M/s.APN Law Associates for A.11
Crl.A(MD).No.515/2022:	Mr.T.Lajapathi Roy, Senior Counsel for Mr.S.Rajasekar
Crl.A(MD).No.536/2022 :	Mr.A.Thiruvadi Kumar, Additional Public Prosecutor
Crl.A(MD).No.747/2022:	Mr.T.Lajapathi Roy, Senior Counsel for Mr.S.Rajasekar

For Respondents :

Crl.A(MD).Nos.228,230,232 and Crl.A(MD).No.233/2022	Mr.A.Thiruvadi Kumar, Additional Public Prosecutor for R1 and R2 Mr.T.Lajapathi Roy, Senior Counsel for Mr.S.Rajasekar - for R3
Crl.A(MD).No.515/2022:	Mr.A.Thiruvadi Kumar, Additional Public Prosecutor Mr.Gopalakrishna Lakshmana Raju, Senior Counsel for M/s.Rishwant S.G.L - for R.3, R.4, R.5 and R.7 Mr.S.Sabbani Karuburajothi - for R.6
Crl.A(MD).No.536/2022:	Mr.Gopalakrishna Lakshmana Raju, Senior Counsel for M/s.Rishwant S.G.L for - R.1 to R.5
Crl.A(MD).No.747/2022:	Mr.A.Thiruvadi Kumar, Additional Public Prosecutor Mr.Jagadeeshpandian for - R11 and R12 Mr.N.Anandapadmanabhan, Senior Counsel for – R.13

Mr.Bhavani Mohan, Special Public Prosecutor
who conducted the trial before the Court below

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COMMON JUDGMENT

N. ANAND VENKATESH, J.

1. To facilitate analysis and for ease of reference, this judgment is structured in the following way:

I. PRELUDE

2. This is a case which brings out the dark side of human behaviour. It focuses our attention to the ugly facets of our society; the caste system, bigotry,

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inhuman treatment of persons belonging to the marginalised section, et al. En-route, this Court is confronted with the now familiar scourge of witnesses conveniently turning hostile in a deliberate bid to derail and deflect the course of justice. Cases such as this are textbook examples of how the criminal justice system can be easily manipulated and won over by witnesses who suborn at the drop of a hat. This has virtually become the norm in high profile cases with the added pressure of the press and social media, the technical challenges posed in proving a large body of electronic evidence. These factors undoubtedly cast an additional burden on the judges who are tasked with the duty of deciding this case. Despite such pressures, the judges must rise to meet these challenges and ultimately render justice within the parameters of the law.

II. THE APPEALS

3.There are seven appeals before us. Four of these have been filed by the accused persons viz.,

- Criminal Appeal (MD) No.228 of 2022 filed by A1
- Criminal Appeal (MD).No. 230 of 2022 filed by A2 and A3
- Criminal Appeal (MD).No.232 of 2022 filed by A13 and A14 and;
- Criminal Appeal (MD).No. of 233 of 2022 filed by A8-A12

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These appeals are directed against the judgment and order passed by the Additional District and Sessions Court-III (Special Judge for SC & ST Act cases), Madurai, made in Special S.C.No.31 of 2019, dated 08.03.2022, convicting and sentencing them in the following manner:

Sl. No.	Rank of the accused	Offence under which convicted	Sentence/ Punishment
1.	A1 to A3 and A8 to A14	Section 120B r/w 302 IPC r/w Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.	Life Imprisonment and a fine of Rs.5,000/-, in default, to undergo three years Rigorous Imprisonment.
2.	A1	Section 302 IPC r/w Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.	Life Imprisonment and a fine of Rs.5,000/-, in default, to undergo three years Rigorous Imprisonment.
3.	A1 to A3 and A8 to A11	Section 364 IPC r/w Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.	Life Imprisonment and a fine of Rs.5,000/-, in default, to undergo three years Rigorous Imprisonment.
4.	A13 and A14	Section 212 IPC	Five years Rigorous Imprisonment and a fine of Rs.5,000/-, in default, to undergo one year Rigorous Imprisonment.
5.	A13 and A14	Section 216 IPC	Five years Rigorous Imprisonment and a fine of Rs.5,000/-, in default, to undergo one year Rigorous Imprisonment.

4. The fifth appeal viz., Criminal Appeal (MD) No.536 of 2022 has been

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filed by the State of Tamil Nadu challenging the aforesaid order insofar it concerns the acquittal of A4 to A7 and A15 from all charges. The sixth appeal ie., Criminal Appeal (MD) No.515 of 2022 has been filed by the victim challenging the acquittals of A4 to A7 and A15 from all charges.

5. The seventh appeal viz., Criminal Appeal (MD) No.747 of 2022 has been filed by the victim (P.W-1) seeking enhancement of sentence. That apart, PW.1 assails the acquittal of those accused persons who were convicted and sentenced and in the said process, were acquitted from certain charges and the victim has sought for convicting and sentencing those accused persons (A1 to A3 and A8 to A14) even for those charges from which they were originally acquitted.

III. THE PROSECUTION CASE

6. The prosecution has premised its case entirely on caste hatred as the prime reason behind the ghastly crime. The genesis of this case goes back to 2014. One Perumal Murugan authored a novel in 2011 titled as "Madhorubhagan". Certain chapters in the novel caused a huge uproar amongst certain communities in and around Tiruchengode from December 2014 onwards. A peace committee was convened on 11.01.2015 in view of various complaints lodged against Perumal Murugan. Maveeran Dheeran Chinnamalai Peravai was

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also one of the complainants. In the peace committee meeting, Perumal Murugan tendered an unconditional apology. It is not necessary to delve deep into the entire history of this case as the same has been set out in detail in the landmark judgment of this Court in ***S. Tamilselvan v. Government of Tamil Nadu, (2016) 4 CTC 561***. The judgment in ***S. Tamilselvan*** was delivered on 05.07.2016. It is during this communal frenzy, that facts of the instant case unfurled on 23.06.2015.

7.The case of the prosecution is that A1 belongs to Kongu Vellalar community and he formed an association called as Maveeran Dheeran Chinnamalai Peravai in the year 2014. Persons who belonged to Kongu Vellalar community were made as members in this Association. On 07.06.2015, a meeting was organised at Konganapuram to propagate the history of Gounder community. In the said meeting, there was a discussion that the girls belonging to Gounder community should not fall in love and marry boys belonging to other communities and particularly, the lower caste communities and for those who indulge in such relationships, they must be taught a lesson. Such a speech is said to have been made by A1 in the meeting. To establish this, the prosecution has relied upon the evidence of P.W-12, P.W-13, P.W-39 (who all turned hostile) and P.W-51. The prosecution has also relied upon Exhibits P13, P14, P15, P-147 to

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P-150, M.O.88, M.O.48 and M.O.49.

8. The deceased Gokulraj and Swathi (P.W-4) were engineering students who studied at KSR College, Tiruchengode. They both belonged to the same class and were known to each other. On 22.6.2015, the deceased Gokulraj made a call from his mobile phone 7418809718 (which number stood in the name of one Jayaraman) to the mobile number of P.W-4, 8508012978 in the evening. This communication is established through the CDR list marked as Ex.P-199 and is deposed to by P.W-62.

9. On 23.06.2015, the deceased Gokulraj had called P.W-4 from the very same mobile number and this time, the call was made to the mobile number 9566949781 which stands in the name of P.W-5, who is the mother of P.W-4. Ex.P-199 report and Ex.P-504 report have been relied upon to prove this conversation. This conversation had taken place for 41 seconds at about 08.22 a.m.

10. The deceased Gokulraj left his home situated at Sastha Nagar, Omalur to Tiruchengode in a bus. P.W-76, Kathiresan, who was a junior studying in KSR College travelled in the very same bus. At that point of time, the deceased

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Gokulraj and Kathiresan had a conversation and Gokulraj informed Kathiresan that he is going to meet Swathi (P.W-4), at Tiruchengode. The deceased Gokulraj got down at Tiruchengode bus stand around 8.20 a.m. To establish this fact, the prosecution has relied upon Ex.P10 and Ex.P11(series) and has also examined P.W-76.

11.At about 09.31 a.m., the deceased Gokulraj contacted Swathi (P.W-4) from his mobile phone (M.O.8) to the mobile number of P.W.5. To establish this fact, the prosecution has relied upon Ex.P199 CDR report marked through P.W-62 and Ex.P505 marked through P.W-102. To establish the tower location, Ex.P-200 was also relied upon.

12.The main purpose of the visit was that the deceased Gokulraj was in need of financial help, and he had asked Swathi (P.W-4) to lend him money. Swathi (P.W-4) met the deceased at Tiruchengode bus stand and gave a sum of Rs.1,000/- (in two Rs.500 notes). Thereafter, both of them decided to go to Ardhanareeshwarar hill Temple. Accordingly, they boarded a bus and to substantiate the same, the prosecution has relied upon Ex.P-35 and Ex.P-40 marked through P.W-18 and P.W-21 respectively.

13.The deceased Gokulraj and Swathi (P.W-4) entered the Ardhanareeshwarar hill temple from the western entrance at about 10.52 a.m.

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and they were inside the temple offering prayers till about 11.58 a.m. Till this point of time, everything was moving naturally. Destiny, however, had other plans.

14.On 23.06.2015, A1, A2, A3, A8 and A9 came to Ardhanareeshwarar hill Temple at about 10.15 a.m. in a Tata Safari car (M.O.42) belonging to A1 (standing in the name of Ramesh Kumar, P.W-24 through whom Ex.P-47 and Ex.P-48 sale receipts were marked). They met the other accused persons A10, A11, A12 and some others at the foothill of the temple. They started proceeding towards the temple which was situated at the top of the hill by steps and at about 11.45 a.m., they found the deceased and P.W-4 talking with each other. When they were enquired about the community to which they belonged, it came to light that Gokulraj belonged to a Scheduled Caste community and Swathi (P.W-4) belonged to the Kongu Vellalar community. Their addresses were also collected by A1 (Ex.P-7 and M.O.83). Ex.-P7 was seized from A2 under seizure mahazar, Ex.P-124. M.O.83 was forensically compared by P.W-64 and the relevant report was marked as Ex.P-209.

15. At about 12.00 noon, A1 to A3, A8 to A12 and deceased Jothimani hatched a conspiracy to do away with the deceased Gokulraj on account of his

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relationship with P.W-4. P.W-4 was sent along with A12 and his wife Jothimani to the foothill. A1 to A3, A8 to A11 took away the deceased Gokulraj to the Uchipillaiyar Temple and he was dragged into the Tata Safari Car (M.O.42). The deceased was taken in the car to the foothill at around 01.00 p.m. Prior to this, the mobile phones of the deceased and PW-4 were taken away from them. P.W-4 was informed that her mobile phone will be handed over in her residence.

16.To establish the above sequence of events, the CCTV footages marked as M.O.36 (Ex.P-297) were relied upon. To establish the same, P.W-79 and P.W-93 experts were examined, and their reports were marked as Ex.P-240 and Ex.P-328 respectively.

17.The deceased was thereafter taken to the Sankari-Salem highways bridge at about 03.00 p.m. A1 is said to have got down from the vehicle and went into the mobile shop of P.W-34, Senthil. A1 handed over his mobile number 9965599979 to P.W-34 and P.W-34 was directed to handover the mobile phone to the brother of A1 viz. Thangadurai (A7). From there, the deceased was taken to Orukkamalai at about 03.30 p.m. and the driving license, passport size photo, two Rs.500/- notes were taken away from the deceased. Later, these were recovered when A1 was arrested and were marked as M.O.7 and M.O.42 through

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P.W-41.

18. At about 04.00 p.m., the deceased was compelled to get down from the car. The mobile phone of the deceased (M.O.8) was brought by A2 and he attempted to open the lock. Since a wrong pattern code was made, the mobile phone could not be opened. Hence, A1 asked A2 to remove the memory card from the mobile phone of the deceased and this memory card was inserted in the mobile phone of A2. Thereafter, the deceased Gokulraj was asked to give a suicide speech which was video graphed in the mobile phone of A2. Thereupon, A1 retained the mobile phone of the deceased with him and the mobile phone of A2 in which the suicide speech was video graphed was handed over to A2.

19. At about 04.45 p.m., A.1 once again came back to the shop of P.W-34 and enquired as to whether the mobile phone was handed over to A7. On confirming this fact, A1 collected the mobile phone of P.W-34 having the mobile number 9698709957(marked as M.O.91). From there, the deceased was taken to Sankagiri old bus stand. There, A1 met his brother A7 and explained the conspiracy hatched by them. This conversation between A1 and A7 was noticed by P.W-32 who was a police officer on duty at that place.

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20. A1 contacted P.W-55, whose mobile number is 9842759639 and this person is the owner of a Mahindra Jeep (M.O.74). This conversation has been established through Ex.P-523. The Mahindra Jeep carried the original registration number TN-33-K-2728. After the mobile phone conversation between A1 and P.W-55 and also with P.W-53, who is the brother of P.W-55, the Jeep was brought near Sankagiri-Salem bypass bridge. The deceased was directed to get down from the Tata Safari car and he was asked to get into the Jeep (M.O.74). In the meantime, A2 collected three numbers of A4 sheet papers from the shop of P.W-34 and he also purchased 2 blue refill pens from the shop of P.W-28. A2 also got into the Jeep.

21.Thereafter, the deceased Gokulraj was threatened to write a suicide note (marked as Ex. P36), which was seized in the presence of P.W-18 by P.W-92. This was further compared by the handwriting expert P.W-64, who gave a report marked as Ex.P-207.

22. The Jeep was taken to Sankagiri old bus stand and A4 was handed over the mobile phone of the deceased Gokulraj (M.O.8). A1 instructed A4 to go to Tiruchengode bus stand and open the mobile phone of the deceased Gokulraj. A4 accordingly went to Tiruchengode bus stand and switched on the mobile

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phone. At about 08.40 p.m., P.W-1, who is the mother of the deceased, made a call from her mobile number to the mobile number of the deceased Gokulraj. A4 attended this call and informed P.W-1 that he was a friend of Gokulraj and thereafter, immediately disconnected the phone call. In the meantime, A1 along with A2, A3 and A5 went to the shop of P.W-31 and a forged registration number was made ready by an employee, Gowri Sankar, examined as P.W-27. Accordingly, a bogus registration number TN-30-AX-6169 was affixed in M.O.74 (Mahindra Jeep).

23. A4 contacted A1 and at about 09.00 p.m., A4 was picked up near SPB Colony and he got into the Mahindra Jeep. The deceased was thereafter taken in the Mahindra Jeep by the accused persons between Cauvery railway station and Anangur railway station i.e., between km.383/11 and 383/13 upline and he was abused and beaten indiscriminately, on the ground that he should not have developed a relationship with P.W-4.

24. The deceased was, thereafter, strangulated and his head was severed. The torso was placed in between the railway track and the head was placed adjacent to the railway track in order to give the impression that the deceased had committed suicide/met with an accident. The suicide note (Ex.P-36) was

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placed in the shirt pocket of the deceased. The wallet of the deceased was thrown into the river. The forged number sticker was removed from the Jeep and it was kept in the Tata Safari car (M.O.42). The weapon, (M.O.72) was placed under the front seat mat of the Tata Safari car (M.O.42).

25. A1 thereafter came to the shop of P.W-34 at about 11.15 p.m., and handed over his mobile phone and got back his Apple phone, which by then, was handed over by A7 to P.W-34.

26. On 24.06.2015, at about 04.00 a.m., P.W-3, who is the elder brother of the deceased contacted P.W-6, Karthik Raja, who was also a collegemate of the deceased and P.W-4 and got the mobile number of Swathi (P.W-4). The mobile number of the mother of P.W-4 was also given to P.W-3 by P.W-6.

27. At about 08.00 a.m., P.W-3 contacted the mobile phone of P.W-5 and this phone call was answered by P.W-4. The conversation between PW-3 and PW-4 was on "speaker mode" and this was captured by P.W-26, Sreenivasan, who was also present during this conversation, in his mobile phone (M.O.41). What was recorded by P.W-26 was sent to the mobile phone of P.W-3 through Bluetooth. This conversation between P.W-3 and P.W-4 was recorded in a CD and

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was marked through P.W-79 as M.O.94. During the conversation, P.W-4 explained to P.W-3 as to what all happened in the temple.

28. In the meantime, A1 asked A2 to purchase two 2GB memory cards. The suicide speech of the deceased Gokulraj was copied in the two newly purchased memory cards, and it was handed over to A1. A2 deleted the video from his phone. The deletion from the phone memory of A2 has been spoken to by P.W-79 and the same has been substantiated through the report of PW-79 who examined M.O.47 and which was marked as Ex.P-240.

29. At about 02.00 p.m. on 24.06.2015, P.W-1 and P.W-3 came to Tiruchengode along with some relatives to lodge a complaint at Tiruchengode police station. At that time, P.W-4 also came to the police station. A complaint (Ex.P-1) was received by P.W-98, who registered the FIR (Ex.P-334) in Crime No.289 of 2015. P.W-99 took up the investigation and he recorded the statements of P.W-1, P.W-3, P.W-4 and P.W-6. P.W-99 was also trying to get in touch with A1 and asked him to come to the police station. A1 was initially replying that he will come to the police station. However, he thereafter switched off the cell phone and absconded. All the accused persons also absconded. A1 is said to have been harboured by A13 to A15 and they helped him to abscond

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after the incident.

30. P.W-99, during the course of investigation, found that the deceased Gokulraj belonged to Scheduled Caste community and the accused persons belonged to Kongu Vellalar community and accordingly, the offence was altered to Section 363 IPC read with Section 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC & ST Act') under Ex.P-335 alteration report and the investigation was handed over to Tiruchengode Deputy Superintendent of Police Ms.Vishnupriya.

31. In the meantime, the body of the deceased was first seen by P.W-37, who was working as a gang man in the railways. At that time, he was accompanied by P.W-15. P.W-37 thereafter intimated P.W-2, who was working as the Assistant Railway Station Master and he in turn informed P.W-7, who gave the complaint (Ex.P-9) which resulted in the registration of an FIR (Ex.P-166) by P.W-92 in Crime No.90 of 2015 under Section 174 of Cr.P.C. P.W-8 and P.W-9, who were the railway pilots, had also seen the dead body on 24.06.2015 at about 08.15 a.m., in between the Cauvery and Anangur Railway Stations.

32. The investigation in the aforesaid case was taken up by P.W-92 and

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thereafter, it was taken over by P.W-96, who prepared an alteration report (Ex.P-332) to one under Section 174(3)(iv) of Cr.P.C. The investigation was thereafter taken over by P.W-97. In the meantime, the KSR College ID card of the deceased was recovered from the dead body of the deceased under Ex.P-30. Video footage of the recovery was captured (marked as Ex.P-301) along with a certificate under Section 65-B of the Indian Evidence Act (marked as Ex.P-300). Ultimately, P.W-97 handed over the entire file to the DSP, Tiruchengode under Ex.P-333.

33. The DSP took over the investigation and clubbed both cases and the investigation was carried on in Crime No.289 of 2015. On 24.06.2015, at about 05.30 p.m., the DSP prepared the observation mahazar in the presence of P.W-21 and the same was marked as Ex.P-43. The rough sketch was prepared and marked as Ex.P-44. P.W-1, P.W-3, P.W-4 and P.W-6 were examined and their statements were recorded. In the meantime, the SP of Police, Namakkal, granted sanction to the DSP to investigate the case. These orders were marked as marked as Ex.P-383 and Ex.P-384.

34. The DSP in the course of investigation prepared an observation mahazar in the railway track (Ex.P-32) and a rough sketch (Ex.P-449). M.O.34

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and M.O.35 were seized in the presence of P.W-18 under seizure mahazar (Ex.P-34).

35. The DSP thereafter focused her attention on the CCTV footages. She is said to have viewed the CCTV footages in the temple on 26.06.2015. Thereafter, the DSP had sent a requisition to P.W-90, who is the Assistant Commissioner of the HR & CE Department to produce the CCTV footage. Section 91 Cr.P.C summons that was prepared to produce the CCTV footages was marked before the trial court as Ex.P-291.

36. On the same day, the DSP conducted the inquest between 10.30 a.m. To 01.30 p.m., in the presence of the witnesses at Salem Mohan Kumaramangalam Hospital and three reports were marked as Exhibits P-450, P-451 and P-452.

37. P.W-36 filed a Habeas Corpus Petition in H.C.P.No.1541 of 2015 before the High Court for the post-mortem to be conducted in the presence of special team of doctors. Accordingly, the autopsy was conducted by Dr.Sampath Kumar (P.W-85) along with Dr.Gokula Ramanan (P.W-86) and Dr.Sangeetha at Salem Mohan Kumaramangalam Medical College and Hospital. The head and the torso

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were examined separately and a final opinion was given and the postmortem certificate was marked as Ex.P-273. On examination of the dismembered head, the following injuries were noted:

> *"Dismembered head was flat, flabby,like a mask with major part of scalp, bones, brain and left eye missing hence we reconstructed the face using sponges and suture the edges to resemble like a face.*
>
> *1) traumatic decapitated head with multiple fractures and decapitated at the level chin extending backwards and upwards at the level of right ear lobule and on the left side, left ear partly cut and extends backwards and upwards at the level of atlanto axial joint and continues above the occipital protuberance.*
>
> *2) Bilateral temporal, parietal bone and a part of right occipital bone were absent.*
>
> *3) remaining bones of the vault of the skull was fractured into multiple pieces*
>
> *4) Multiple fractures over lateral parts of maxilla and mandible with surrounding contusion.*
>
> *5) Brain matter was completely absent.*
>
> *6) The lower border of entire circumference of head were clean cut.*
>
> *7) The nose had a incised wound and dived into two halves longitudinally and the margins were regular.*
>
> *8) Entire scalp tissue was pale without any contusion*
>
> *9) left eye was disfigured and maggots were seen emerging from the left eye*

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10) punctured wound seen below the medial aspect of left eye 1cm x 0.6cm x muscle deep

11) an incised wound extending from outer aspect of left supra ciliary margin and extends 2cms below the outer cantus of left eye with surrounding contusion 5x2cms O/D it was longitudinally placed and extending to the lower border of face for a length of 6cms, With both the edges were sharp and margins were clean cut

12) there was an oblique stab wound behind the left ear 4x1cms and running obliquely downwards to the lower border of head with 7cms depth, the edges were sharp and margins were regular.

13) the lower border of dismembered skull was regular in nature and thin layer of contusion with no oil or grease identified

14) an oblique cut injury seen over left parietal region of scalp 5cms x 0.5cm x bone deep.

15) a cut injury present over right border of the tongue to its middle at the level of anterior 1/3rd for a length of 5cms.

16) an oblique sliced cut injury was seen dividing the thickness of the tongue in to two halves along the posterior 2/3rd of tongue.

17) fracture separation of symphisis menti and maxilla at its middle with tooth intact."

38. On examination of the torso, the following injuries were noted:

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1) "Fracture thyroid cartilage with surrounding contusion

2) A cut injury extending from posterior aspect of left side of neck extending upwards and merging with the upper border of torso 17cms x 4cms x muscle deep. The injury is seen 11cms above medial end of left clavicle.

3) Horizontal cut injury seen over center of right side of neck 4 x 2 x 6 cms ending with the decapitated head.

4) An another cut injury 1cm above the injury no.3, Vertically placed 10 x 2 x 5cms opening with the dismembered edge with sharp edges and underlying thin layer of contusion.

5) horizontal cut injury seen over the left side of neck 17 x 4cm x muscle deep 11 cms above medial end of left clavicle

6) another cut injury over posterior aspect of neck 6 x 0.5 x 0.5 cm with sharp edges and underlying thin layer of contusion.

7) cut injury over left side of the mandibular border extending backwards and behind left pinna 6cm below the thyroid cartilage and extends backwards to back of the neck

8) cut injury below right pinna 16 cms in length ending with the atlanto axial joint

9) all the above injuries the margins are clean cut, edges are sharp with thin layer of contusion.

10) dark coloured stain was seen over left sole."

39. The following final opinion of the post mortem was as follows:

OPINION:

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a) "The deceased would appear to have died due to deep cut injuries to neck.

b) injuries to the skull was due to crushing force of a blunt object, these injuries in are likelyhood to be postmortem in nature.

c) The deceased would appear to have died within 3-4 days prior to autopsy.

d) However the final opinion will be given after the following reports are received:

-X-ray

-Viscera analysis

-Histopathological report

-Microbiological report

-DNA analysis"

40. On receipt of serology report (Ex.P-275), X-Ray report (Ex.P-276), Microbiology report (Ex.P-277), Histopathology report (Ex.P-278), Entomology report (Ex.P-279), DNA reports (Exhibits P.280 and P.281), a final opinion (Ex.P-274) was given to the effect that the deceased would appear to have died due to deep cut injuries to neck.

41. Photos were taken at the time of conducting the postmortem and the same was marked as Ex.P-548 and a Section 65-B certificate was also given, which was marked as Ex.P-547.

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42. On receipt of the postmortem report and after receiving the photographs and a video of postmortem, the DSP prepared an alteration report (Ex.P-349). Thereafter, A8 was arrested on 01.07.2015 at about 08.00 a.m. and based on the admissible portion of his confession, the mobile phone (M.O.50) and his Bajaj two wheeler (M.O.51) were recovered under seizure mahazar (Ex.P-65). On the same day, at about 12.30 noon, A9 was arrested and based on the admissible portion of his confession, the Hero Honda two wheeler (M.O.53) and Nokia Mobile phone (M.O.52) were recovered under seizure mahazar (Ex.P-70).

43. Later, on the same day, A10 was arrested and based on the admissible portion of his confession, Samsung mobile phone (M.O.54) was recovered under seizure mahazar (Ex.P-75). Shortly thereafter on the same day, A11 was also arrested and based on the admissible portion of his confession, the Bajaj two wheeler (M.O.56) and Motorala mobile phone (Ex.P-55) were recovered under seizure mahazar (Ex.P-79). A12 was also arrested on the same day. The arrest and recovery of A8 to A12 was undertaken in the presence of the same witnesses viz. P.W-41 and one Rathinakumar.

44. The body of the deceased Gokulraj was handed over to P.W-1 on 02.07.2015 and the requisition was also made for the DNA test of the deceased

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Gokulraj. The investigation officer also received the seized material objects from P.W-92, Appusamy, who was the railway SSI under Form-91 marked as Ex.P-460. The seized material objects pertained to those materials recovered from the body of Gokulraj which were marked as M.O.1 to M.O.8. That apart, the suicide note marked as Ex.P-36 and the bus ticket marked as Ex.P-35 were also recovered by the investigation officer.

45. On 07.07.2015, A3 surrendered before the Judicial Magistrate, Sree Vaikuntam and was taken on police custody on 08.07.2015. His confession was recorded in the presence of P.W-41 and based on the admissible portion of the confession, the towel (M.O.57) was recovered under seizure mahazar marked as Ex.P-86 and the Nokia Mobile phone (M.O.58) was also recovered under seizure mahazar marked as Ex.P-87.

46. On 11.07.2015, A4 was arrested in the presence of P.W-41 and based on the admissible portion of the confession, the Micromax Mobile phone (M.O.59) was recovered under seizure mahazar marked as Ex.P-92. On the same day, A5 to A7 were also arrested and the Bajaj pulsar two wheeler(M.O.60) was

recovered based on the admissible portion of the confession of A7 under seizure

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mahazar marked as Ex.P-102.

47. In the course of investigation, the students notebook of the deceased Gokulraj and the admission form were seized from P.W-10 and it was sent for comparison with the handwriting found in the suicide note (Ex.P-36).

48. The investigation officer also examined some of the witnesses viz., P.W-27, P.W-31, P.W-75 and some of the other witnesses to understand as to how the death could have been caused at the railway track. This took place on 30.07.2015.

49.The hard disk which was seized (Ex.P-297) (M.O.36) was sent for forensic science examination on 12.08.2015. Similarly, the notebook of the deceased Gokulraj seized from the college, the suicide speech of Gokulraj and some of the photos of the deceased were also sent for forensic science examination on 31.08.2015. The investigation officer also took steps to record the statements of P.W-4 and P.W-6 under section 164 of Cr.PC. The learned Judicial Magistrate (P.W-60) recorded the statements of P.W-4 and P.W-6 under Section 164 Cr.PC on 02.09.2015. These statements were marked as Ex.P.2 and Ex.P.8 respectively.

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50. Unfortunately, DSP Vishnupriya, who was conducting the investigation committed suicide on 18.09.2015. The DSP conducted the investigation from 24.06.2015 to 18.09.2015 and all those documents which were prepared when Vishnupriya was investigating the case were marked as Ex.P-336 to Ex.P-381 before the Trial Court.

51. The investigation was transferred to CBCID through an order passed by the DGP on 19.09.2015 (Ex.P-237) and the investigation was taken over by P.W-100. The investigation was thereafter transferred to P.W-102 who was the Additional Superintendent of Police, Coimbatore and the FIR was re-registered and assigned Crime No.2 of 2015 (Ex.P-234). The proceedings authorising P.W-102 under Rule 7 of the SC/ST Rules, 1995 were marked as Ex.P-447.

52. The new investigation officer continued with the investigation and recorded the statements of some witnesses under Section 161(3) of CrPC. He also collected the caste certificates of the deceased Gokulraj and that of the accused persons which were marked as Ex.P-129 to Ex.P-146. On 29.09.2015, P.W-102 took steps for issuance of NBW against the absconding accused A1 and A2 (The warrants were marked as Ex.P-466 and Ex.P467). On 08.10.2015, A13

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to A15 were arrested at about 11.30 p.m., in the presence of P.W-42 and based on the admissible portion of the confession of these accused persons, M.O.61, M.O.62, M.O.66, M.O.63, M.O.64 and M.O.65 were recovered under seizure mahazar (Ex.P-108, Ex.P-109 and Ex.P-110).

53. On 09.10.2015, an alteration report was sent to the Chief Judicial Magistrate, Namakkal (Ex.P-480) and the provisions were altered to Sections 363, 302, 212 and 260 of IPC r/w Sectiond 3(2)(v) of the SC/ST Act. The DNA blood profile of P.W-1 was also taken, and it was sent for DNA test through letter marked as Ex.P-482.

54. On 11.10.2015, A1 surrendered at about 11.50 a.m. at the CBCID office, Namakkal and he was arrested at about 12.15 p.m. A1 was taken on police custody from 12.10.2015 to 17.10.2015. A2 also surrendered before the Judicial Magistrate, Karur on 13.10.2015.

55. The confession of A1 was recorded pursuant to which the TATA safari vehicle (M.O.42), the driving license of A1, passport size photo of the deceased Gokulraj, copy of the driving license of the deceased Gokulraj, which were available in the car along with the key of the vehicle were seized. The fake

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sticker bearing TN 30 AX 6169 (M.O.71) in a torn condition was seized. That apart, the knife that was used for murdering the deceased was also seized (M.O.72) under a seizure mahazar (Ex.P-116).

56. On 16.10.2015, based on the admissible portion of confession of A1, the police was taken to the house of P.W-55 and the Jeep bearing number TN 33 K 2728 was recovered (M.O.74) under seizure mahazar (Ex.P-118). Thereafter, A1 was taken to the Maveeran Dheeran Chinnamalai Peravai Office and from there, micro SD 2 GB Samsung memory card was recovered (M.O.47) (Ex.P-490) under seizure mahazar marked as Ex.P-120. M.O.76 to M.O.82 were also recovered under the same seizure mahazar.

57. A2 was taken into police custody on 15.10.2015 and based on the admissible portion of his confession, M.O.83 to M.O.87 were recovered. That apart, Ex.P7 which contained the address of P.W-4 with three phone numbers were also seized under a seizure mahazar (Ex.P-124). The confession of A1 and A2 was recorded in the presence of witness P.W-44.

58. The investigation officer took steps to get the opinion of the forensic science expert and also the handwriting expert. That apart, the CDR details were

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also collected from the respective service providers who were examined as witnesses. Steps were also taken to conduct the Test Identification Parade and accordingly, a Test Identification Parade was conducted in the presence of the Judicial Magistrate No.2, Namakkal on 05.11.2015. The Test Identification Parade reports were marked as Ex.P-175 and Ex.P-176.

59. P.W-102, after receiving all the expert reports and after recording the statements of all the witnesses, completed the investigation and the final report under Section 173 Cr.P.C was laid before the Chief Judicial Magistrate, Namakkal as against seventeen accused persons. After serving the free copies to the accused under Section 207 Cr.P.C, the learned Magistrate committed the case to the file of the Principal District and Sessions Court, Namakkal who took the case on file as S.C.No.78 of 2015.

IV. PROCEEDINGS BEFORE THE TRIAL COURT

60. One of the accused persons Jothimani died and yet another accused person Amutharasu was absconding and hence, the case was split up.

61. The Principal District and Sessions Judge, Namakkal framed the following charges as against A1 to A15:

Sl.No.	Accused Rank	Charge

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1.	A1 to A15	Section 120B IPC
2.	A1 to A6, A8 to A11	Section 364 IPC
3.	A7, A12 to A15	Section 364 r/w Section 120B IPC
4.	A1 to A6, A8 to A11	Section 3(2)(v) SC/ST (POA) Act
5.	A1, A12 to A15	Section 3(2)(v) SC/ST (POA) Act r/w Section 120B IPC
6.	A1	Section 384 IPC
7.	A2 to A5	Section 384 r/w Section 149 IPC
8.	A6 to A15	Section 384 r/w Section 120B IPC
9.	A1 to A3, A5	Section 465 IPC
10.	A4, A6 to A15	Section 465 r/w Section 120B IPC
11.	A1 to A3, A5	Section 468 IPC
12.	A4, A6 to A15	Section 468 r/w Section 120B IPC
13.	A1 to A3, A5	Section 471 IPC
14.	A4, A6 to A15	Section 471 r/w Section 120B IPC
15.	A1	Section 302 IPC
16.	A2 to A6	Section 302 r/w Section 149 IPC
17.	A7 to A15	Section 302 r/w Section 120B IPC
18.	A1	Section 3(2)(v) SC/ST

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		(POA) Act
19.	A2 to A5	Section 3(2)(v) SC/ST (POA) Act r/w Section 149 IPC
20.	A6 to A15	Section 3(2)(v) SC/ST (POA) Act r/w Section 120B IPC
21.	A13 to A15	Section 212 IPC
22.	A13 to A15	Section 216 IPC
23.	A1	Section 201 IPC
24.	A2 to A6	Section 201 r/w Section 149 IPC
25.	A7 to A15	Section 201 r/w Section 120B IPC

62. The prosecution examined P.W-1 to P.W-72 and Ex.P-1 to Ex.P-225 were marked and M.O.1 to M.O.88 were also identified and marked. At that point of time, Crl.O.P.No.6030 of 2019 came to be filed before the Principal Bench of this Court at Madras by one Chitra, the de-facto complainant. Vide order dated 08.05.2019, this Court had directed that the case be withdrawn from the file of the Principal District and Sessions Judge, Namakkal and transferred to the file of the Special Court for Trial of Offences under the SC/ST Act at Madurai. Consequently, the case was transferred to the file of the Additional District and Sessions Court-III (Special Judge for SC & ST Act cases), Madurai, and renumbered as Special S.C.No.31 of 2019

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63. The followed altered charges and additional charge were framed by the trial Court on 04.09.2021:

Sl. No	Rank of the accused	CHARGE
	ALTERED CHARGE	
1.	A1 to A15	Section 120-B IPC
2.	A1 to A6, A8 to A11	Section 3(2)(v) SC/ST (POA) Act
3.	A7, A12 to A15	Section 3(2)(v) SC/ST (POA) Act r/w Section 120-B IPC
4.	A1	Section 3(2)(v) SC/ST (POA) Act
5.	A2 to A5	Section 3(2)(v) SC/ST (POA) Act r/w Section 149 IPC
	ADDITIONAL CHARGE	
1.	A1 to A6	Section 201 IPC

64. The prosecution thereafter examined P.W-73 to P.W-106 and marked Ex.P-226 to Ex.P-550 and identified and marked M.O.89 to M.O.107. The Court below also marked certain Court documents viz., C1 to C9 and two Court witnesses were examined as C.W-1 and C.W-2. The defence marked Ex.D.1 to Ex.D.6.

65. The incriminating evidence gathered during the trial were put to the accused persons while they were questioned under Section 313(1)(b) of Cr.P.C. The accused have, in unison, denied the same as false.

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66. The Court below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, convicted and sentenced A1 to A3 and A8 to A14 in the manner stated in paragraph 3, *supra*. A4 to A7 and A15 were acquitted from all charges.

67. Aggrieved by the same, these convicts, the State and the victim are before us in these seven appeals, the details of which have been set out in paragraphs 3-5, *supra*.

V. RIVAL SUBMISSIONS

68.The submissions of Mr.Gopalakrishna Lakshmana Raju, learned Senior Counsel for A.1, Mr.A.Ramesh, learned Senior Counsel for A.2 and A.3, Mr.ARL.Sundaresan, learned Senior Counsel for A.8, Mr.S.Ashok Kumar, learned Senior Counsel for A.9 and A.10, Mr.N.Anandha Padmanabhan, learned Senior Counsel for A.11 and Mr.R.Navaneethaakrishnan, learned counsel for A.13 and A.14 can be summarised as under:

- Neither in the observation mahazar (Ex.P-43 and Ex.P-44) nor in the sketch (Ex.P-448) prepared by the DSP, Tiruchengode, there is any mention about the availability of CCTV in the temple and even

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the subsequent Investigation Officer did not prepare a separate observation mahazar or a sketch. Hence, the very availability of the CCTV cameras in the temple is doubtful.

- P.W-21 in his evidence mentions about preparation of an observation mahazar and a sketch which contained the availability of CCTV cameras and if this statement made by P.W-21 is taken to be true, apart from Ex.P-43, Ex.P-44 and Ex.P-448, there is yet another observation mahazar and sketch available and it was not produced before the Court.
- Except P.W-21, no one has spoken with regard to the location of the CCTV cameras in the temple and even this witness has pointed out the location of only seven cameras. The observation mahazar and the sketch that was prepared by the DSP, Tiruchengode did not even mention about the availability of the CCTV cameras.
- The sketch that was marked as Ex.P-448 refers to yet another entrance on the northern side and no one has spoken as to whether there was a CCTV camera on the northern entrance also. In the absence of clarity about the availability of the CCTV cameras and in the absence of evidence to show that the accused persons went out of the temple with the deceased, the last seen theory

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cannot be applied against the accused persons.

- P.W-21, who was issuing tickets in the temple, in his evidence, explains about the availability of CCTV cameras and speaks about the police asking for the CCTV footage and the same being taken away on 26.06.2015. Thereafter, on 15.10.2015, the DVR recorder and other accessories were handed over to the police. Inspite of the same, what was shown before the Court as CCTV footage was only the footage shown from a SONY DVD (Ex.C.1) and the witnesses viz. P.W-1, P.W-4, P.W-5, P.W-6, P.W-21, P.W-26, P.W-32, P.W-33, P.W-36, P.W-41, P.W-43, P.W-76 and P.W-88 only saw the footage from this DVD, which was not accompanied with Section 65-B certificate. Ex.C.1 was only copied and given by P.W-79 from M.O.36 (Ex.P-297).
- P.W-21 states that the hard disk was removed from the DVR by an expert and handed over to the police. The expert referred to by P.W-21 was P.W-89 and this witness states that he is not aware about the earlier hard disk and he only installed a new hard disk on 30.06.2015 in the DVR. He further states that he was never examined by DSP, Tiruchengode and his assistance was not taken on 28.06.2015 to remove the hard disk from the DVR. Even P.W-90

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only talks about P.W-89 as the person who helped in removing the hard disk and whereas P.W-89 knew nothing about the removal of M.O.36.

- The hard disk was seized on 28.06.2015 and it is clear from Ex.P-454 which is the Form-91, that the same was handed over to the Court only on 20.07.2015. There is absolutely no explanation from the prosecution as to who was in possession of the hard disk from 28.06.2015 to 20.07.2015.
- That apart, the DVR (M.O.37) was seized only on 15.10.2015. The hard disk was sent for analysis only on 31.08.2015 to P.W-79. The hard disk was not able to be opened since it did not accompany the DVR. Hence, P.W-79 issued a report (Ex.P-238) to the effect that it is not possible to open the hard disk without the DVR. Ultimately, the report was sent by P.W-79 along with the letter (Ex.P-242). Due to this time lag, there is absolutely no authenticity to prove that what was contained in the hard disk was the one which was shown in the Court by marking Ex.C.1 and apart from the lack of authenticity, Ex.C.1 is inadmissible in evidence since it was not accompanied with Section 65-B certificate.
- Even P.W-93, who is the scientific assistant has only viewed the

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CCTV footage from the DVD that was sent by P.W-79 and he has further downloaded it in a pen drive while comparing the persons found in the CCTV footages with the photographs sent to him.

- P.W-93 was the scientific assistant from whom report was received after comparing the identity of the accused persons. Ex.P-305 to Ex.P-311 and Ex.P312 to Ex.P-327 were the photographs of the accused persons. These photographs were downloaded from two CDs (M.O.89 and M.O.90). The photographs were not accompanied with a Section 65-B certificate. The CCTV footages were seen by P.W-93 by downloading it to a pen drive. Ultimately, the snapshots, numbering 19, were taken from the video and it was also not accompanied with a Section 65-B certificate. In view of the same, Ex.P-328 report given by P.W-93 cannot be acted upon.
- The hard disk was sent for analysis to P.W-79 only on 31.08.2015. Admittedly, the contents were downloaded in Ex.C.1 (SONY DVD) and one copy was given to the Court, another copy was sent to the Investigation Officer and the third copy was issued to P.W-93 and none of it was accompanied with Section 65-B certificate. This is apart from the fact that only Ex.C.1 was played before the Court and curiously, this was marked through P.W-4, who did not support

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the case of the prosecution.

- Ex.P-301 that was marked through P.W-92 was not accompanied with a certificate under Section 65-B and such a certificate was filed (Ex.P-300) only on 14.12.2020 and even this certificate did not fulfil the requirements under Section 65-B(2) (b) and Section 65-B(4)(b).
- The Section 65-B certificates marked as Exhibits P-329, P-331 and P-550 also did not satisfy the requirements of Section 65-B(2)(b) and Section 65-B(4)(b). Out of this, P.W-95 who gave these certificates marked as Ex.P-329 and Ex.P-331 was not even in possession of the relevant device. The same applies to Ex.C.7 also.
- The last seen theory is put against the accused persons solely based on the CCTV footage which is inadmissible in evidence and if this evidence goes, there is nothing to connect the accused persons and the alleged incident.
- On a demurrer, even if M.O.36 is acted upon, the last footage that is available is where the deceased accompanies the accused persons and goes into the temple. There is no footage available to show that the accused persons, at any point of time, had any conversation with either the deceased or P.W-4 and there is no footage available to establish that the deceased had left the temple

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along with the accused persons. In the absence of any such evidence, the dead body of the deceased found next day at about 08.15 a.m., cannot be put against the accused persons. This is more so since P.W-14, P.W-19, P.W-22 and P.W-38 who were examined to prove the last seen theory have all turned hostile.

- Between 23.06.2015 (11.30 a.m. - 11.45 a.m.) to 24.06.2015 (08.15 a.m.) when the dead body was found, not a single witness states about any of the accused persons being seen with the deceased.
- The manner in which the prosecution has projected this case is completely in variance between the CCTV footage and what was stated in the complaint (Ex.P-1).
- The conversation alleged to have taken place between P.W-3 and P.W-4 is said to have been recorded in the mobile phone of P.W-26 and it was transferred to the mobile phone of P.W-3 through Bluetooth. Ultimately, the voice file was opened from the mobile phone of P.W-3 and it was converted into a CD (M.O.94). This was not accompanied by Section 65-B certificate and hence, is inadmissible.
- Insofar as motive is concerned, except for Ex.P-13 marked through

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P.W-12, there is no other evidence available. Even P.W-12 turned hostile and no witness speaks about what A1 had spoken in the meeting and in a case involving circumstantial evidence, the most vital link of motive has not been proved by the prosecution.

- There was no evidence whatsoever for the involvement of the accused persons in the murder of the deceased and the last seen theory can be applied only if there is proximity in the place and time after the deceased was seen in the company of the accused persons and the incident.
- The place where the murder actually took place, itself is highly doubtful and the same is clear from the contradicting evidence of P.W-36, P.W-37, P.W-75, P.W-84 and P.W-99.
- The inquest report marked as Ex.P-450 to Ex.P-452 shows that the death was caused due to suicide and the evidence of P.W-97 shows that no one cooperated in the identification of the deceased.
- The evidence of P.W-8, P.W-9, P.W-18 and P.W-84 shows that even when the dead body was lying on the track, several trains passed over the body. Hence, it is clear that trains were passing by right from 23.06.2015 night till the next day and the injuries sustained cannot be attributed against the accused persons.

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- The evidence of the postmortem doctor along with various reports throws a very strong doubt as to whether the deceased would have died due to cut injuries since there is nothing to indicate that there was cut in the blood vessels or in the vital organs of the deceased. Going by the manner in which the dead body was found, the alternative hypothesis that the death took place due to accident/suicide is very much possible in this case.
- The mobile phone that was seized from the deceased (M.O.8) contained two sim cards and one of the sim card stood in the name of one Jayaraman. No steps were taken by the Investigation Officer to trace the said Jayaraman and examine him. The evidence of P.W-69 and the version given by the Investigation Officer (P.W-102) shows that the prosecution never took steps to find out Jayaraman and to examine him as a witness.
- The very fact that A1 was absconding and he participated in a talk-show to clarify his position, is not, by itself, an incriminating circumstance and A1 did not make any inculpatory statement against himself.
- The evidence of P.W-85 and P.W-86 read with the medical evidence does not establish that the deceased died due to cut injuries and

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hence, the prosecution did not prove beyond reasonable doubts that the death was due to homicide. Even M.O.72 which is said to have been recovered from A1 was not shown to neither P.W-85 nor P.W-86 to substantiate that the cut injuries were sustained due to the weapon marked as M.O.72.

- Maggots were found in the dead body and when it was sent for analysis, Ex.P-279 shows that the forensic entomology analysis was not able to be conducted since the samples were disintegrated due to inadequate preservation. However, the oldest/ matured L3 stage larvae was found to be approximately developed 3.5 days from the time of oviposition. The dead body was admittedly wrapped up and sent to Erode Government Hospital on 24.06.2015 and it was continuously kept in refrigeration. If that is so, the incident should have taken place 3.5 days prior to 24.06.2015. This completely improbabilises the case of the prosecution as if the conspiracy took place on 23.06.2015 based on the CCTV footages and the incident took place on 24.06.2015.

- As per Ex.P-42, the deceased in his own hand has mentioned his blood group as 'B positive'. However, the blood sample collected

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from the deceased based on which the serological report was prepared (Ex.P-226), reveals that the blood group of the deceased is 'O' group. Hence, either the identity of the deceased is doubtful or the ID card and application given by the deceased were all made up subsequently to improve the case of the prosecution.

- There is absolutely no evidence to show that there was conspiracy between the accused persons.
- There is a serious doubt as to whether the deceased belonged to the Scheduled Caste community and there is not a single document to show to which caste the deceased belonged to, to conclude that he belonged to the Scheduled Caste community. It is completely absent both in Ex.P-40 as well as in Ex.P-146.
- The accused persons did not have any knowledge that the deceased belonged to the Scheduled Caste community and the certificate that was marked before the Court below was not in the prescribed format. Hence, the offence under the SC & ST Act must fail.

- Even when the alteration report was made, what was taken into consideration was only the community of the deceased and at that

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point of time, even the identity of the accused persons had not fructified.

- Even the call records that were relied upon by the prosecution did not establish as to whether there was any tower available in the place where the temple was situated and none of the nodal officers have spoken about the same. That apart, the prosecution was not able to establish that all the mobile numbers stood in the name of the accused persons.
- The arrest and recovery as spoken to by P.W-41 clearly shows that P.W-41 was not even able to properly identify the accused persons in the Court and the arrest itself was done due to the pressure exerted from 24.06.2015 to 01.07.2015 and which was headed by P.W-36.
- The accused persons were not furnished with Ex.P-297 (M.O.36) or Ex.C.1 along with the final report and only after Ex.C.1 was marked through P.W-4, a copy was furnished.

- When P.W-79 was examined, M.O.36 was not able to be opened in the Court and only when P.W-87, who was an expert, managed to get the hard disk opened in the Court, P.W-79 was recalled and

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Ex.P297 was marked. All this procedure adopted by the Court below caused serious prejudice to the accused persons.

- The investigation was conducted with serious prejudice as against the accused persons only for the reason that they belonged to a particular community and the prosecution has developed the case by adding accused persons belonging to the community to suit their convenience.
- The Section 161 statements recorded from P.W-1, P.W-3, P.W-4 and P.W-6 reached the Court only on 04.04.2018, much after the final report was filed on 07.01.2016. That by itself clearly shows that the prosecution had developed its case and Ex.P-1 complaint did not even contain any of the allegations as found in the Section 161 statements of these witnesses.
- The CDR relied upon by the prosecution shows that none of the tower was coinciding/matching with the mobile numbers through which the accused persons are said to have spoken with each other on the date of the incident and the same is evident from Ex.P-200.
- The whole case was influenced by media trial and the same is evident from the fact that even before the CCTV footages were recovered from the temple, it was telecast in the Puthiya Talaimurai

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TV Channel on 25.06.2015 and 26.06.2015.

- The questions that were put to the accused persons under Section 313 of Cr.PC were not focused on the incriminating evidence and certain questions were running into several pages. Therefore, it was contended that the accused persons missed an opportunity to give their explanation on the incriminating evidence and the questioning under Section 313 of Cr.PC was only followed as an empty formality.
- There was no mention with regard to the starting date and time and the ending date and time of the hard disk (M.O.36) and even the hash value was not mentioned to ensure that it is not tampered. There was also no accountability as to the chain of custody since the hard disk was handled by so many persons and there is a chance of the same being tampered.
- P.W-79 is not an expert under Section 79A of the Information Technology Act, 2000. That apart, the so called expert witnesses who were examined by the prosecution did not produce any material to show their expertise and hence, their evidence cannot be acted upon.
- During the course of trial, documents were marked through

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witnesses who were neither the authors of the documents nor could identify its contents. This was done while marking Ex.C.1 through P.W-4, Ex.P-13 through P.W-12, Ex.P-147 through P.W-51 etc.

- The seizure of the memory card (M.O.47) from A1 is totally false and unbelievable. A1 was suspected in connection with the offence at the earliest point of time and confessions that were recorded from few of the accused persons when they were arrested on 01.07.2015 implicated A1. Hence, there was no reason as to why no search was conducted in the house and office of A1 till 16.10.2015, when the police custody of A1 was taken. This is apart from the fact that the report of P.W-79 does not speak about anything on the possibility of the electronic evidence being tampered with since it was recovered after 115 days after the so called recording.
- The origin of the suicide speech M.O.89 is not known. The prosecution has not explained from which source this video was made. That apart, it was not accompanied by Section 65-B certificate.
- In the absence of any clinching evidence to establish that all the

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accused persons were involved till the deceased was done to death, all of them cannot be roped in with the aid of Section 149 IPC.

- Whenever objections were made while marking electronic evidence, the Court below marked the evidence subject to objections, but however, those objections were never dealt with in the judgment.

69. Per Contra, the learned Additional Public Prosecutor appearing on behalf of the State made the following submissions:

- It has been clearly proved by the prosecution that all the accused persons are caste Hindus and they had the caste pride and strong affinity towards their caste and hatred towards persons belonging to the Scheduled Caste community.
- The prosecution has sufficiently established that the deceased belonged to the Scheduled Caste community through the evidence of P.W-50 and by marking Exhibits P-40, P-42 and P-146.

- The Court below went wrong in acquitting A4 to A7 and A15 even without taking into account the effect of Section 8 (b) of the SC & ST Act which clearly creates a reverse burden once the

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prosecution proves that a group of persons had committed an offence under Chapter II of the Act and it was as a consequence of an existing dispute on any matter. There was an existing dispute since the accused persons had developed a hatred against persons belonging to the Scheduled Caste community.

- The accused persons are all closely related to each other and hence, they also were having the same attitude as that of A1 against the Scheduled Caste community.
- The motive for the crime has been established through P.W-12 and P.W-13 read along with Ex.P-13 with regard to the meeting that was conducted at Karur on 07.06.2015. Even though P.W-12 and P.W-13 turned hostile, the answers given by P.W-12 in the cross examination done by the Prosecution substantiates what is contained in Ex.P-13.
- Insofar as the meeting held at Namakkal on 14.06.2015, even though P.W-39 turned hostile, he has accepted in his cross examination the meeting held on 14.6.2015 and seeing A1 in that meeting. The falsity of the evidence of P.W-39 was exposed through the evidence of P.W-51 in whose presence photographs were downloaded from the Facebook account of P.W-39

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supporting the Association.

- A1 in his interview to Puthiya Thalaimurai news channel had confessed to meeting the deceased and P.W-4 at the temple and confronting them.
- The evidence of P.W-3 and P.W-88 must be brought within the doctrine of *res gestae* since they came to know about the incident contemporaneous to the information provided by P.W-4 immediately after the incident.
- The seizure of M.O.76, M.O.80, M.O.81 and M.O.82 from the office of A1 clearly established the objects of the association and A1 being at the helm of affairs.
- The deceased missing from 23.06.2015 is established through the evidence of P.W-6 and P.W-76 and hence, there is no scope for the deceased to have died prior to 23.06.2015 as was projected by the appellants/accused.
- The body that was traced in the railway track was clearly identified to be that of the deceased Gokulraj through the evidence of P.W-1, P.W-3, P.W-61 read along with Ex.P-177, P.W-68 read along with Ex.P-218 and Ex.P-219, P.W-75 and P.W-92.

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- The death of the deceased Gokulraj was homicidal and it was established through the evidence of P.W-92, P.W-85 read along with Ex.P-273, P.W-102 read with Ex.P-493, P.W-86 and P.W-75 read with Ex.P-229.
- The deceased found in the company of P.W-4 has been established through the CDR by examining the nodal officers, *res gestae* evidence of P.W-3, P.W-6, P.W-26 and P.W-88, the evidence of P.W-26 read along with M.O.41, CCTV footage marked as Ex.P-297 (M.O.36) along with the evidence of P.W-79, the statement made by A1 in the talk-show conducted by Puthiya Thalaimurai news channel and established through Ex.C.9, Ex.C.7, Ex.P-549 and Ex.P-550. It was further established by examining P.W-106 read along with M.O.46 and Ex.C.7.
- The last seen theory was sought to be established through M.O.36 (Ex.P.297) and by examining P.W-22, P.W-34, P.W-19, P.W-14, P.W-32 and P.W-38, but unfortunately, P.W-32 was not believed by the Court below and all the other witnesses turned hostile. Even in such an event, M.O.36 substantially establishes the fact that the deceased was last seen in the company of the accused persons.

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- The accused persons attempted to create a false theory by forcing the deceased to write a suicide note (Ex.P-36) and talk in a suicide video marked as M.O.47 and it was established that the handwriting found in Ex.P-36 was the handwriting of the deceased through the report of P.W-64 marked as Ex.P-207. Similarly, the video that was analysed by P.W-52 has been found to be taken by threatening the deceased, which is clear from the report marked as Ex.P-152.
- The recovery of Ex.P-7 and M.O.83 from A2 was proved through the reports of the expert examined as P.W-64 and marked as Ex.P-211 and Ex.P-209. Similarly, the recovery from A1 under Ex.P-117 and by marking M.O.7 and M.O.73 by examining P.W-44, are incriminating recoveries which adds to the chain of circumstances.
- Even though the recoveries from A3, A8, A9, A10, A11 and A12 did not add much against these accused persons, their involvement in the crime was clinched through M.O.36 (Ex.P-297).
- The recovery under Ex.P-108 of M.O.66, M.O.61 and M.O.62 against A13 and the evidence of P.W-33 and report marked as

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Ex.P-248 read along with M.O.63 and M.O.64, sufficiently establishes the involvement of A13 and A14 in the crime by harbouring A1 and helping him to be in hiding for nearly hundred days and helping him in giving interviews to news channel.

- M.O.36 (Ex.P-297), CCTV footage has been established through P.W-79 and just because Ex.C.1 (DVD recorded from M.O.36) was played to the witnesses, that will not in any way discredit the primary evidence which was available before the Court and which was also seen in the Court. It is nobody's case that there is discrepancy between M.O.36 and Ex.C.1.
- When M.O.94 (CD) downloaded from the mobile phone of P.W-3 was marked, there was no objection on the side of the accused persons and hence, such an objection cannot be raised for the first time before the Appellate Court.
- Insofar as M.O.47 is concerned, it was seized from A1 after his arrest and there is no question of getting Section 65-B certificate from A1 to rely upon the memory card. M.O.85, which was the mobile phone seized from A2, was sent for expert opinion to P.W.79 and the expert through Ex.P-244 report

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has concluded that there was transfer of file from this phone to the memory card.

- That apart, Ex.P-246 opinion also shows that there was an audio and video file in the mobile phone.
- Ex.P-301 which is the memory card which contains the photographs and videos taken in the scene of crime has been supported with Section 65-B certificate marked as Ex.P-300 through P.W.92. When this certificate was marked, no objection was raised regarding the non-fulfilment of Section 65-B(2)(b) and Section 65-B(4)(b) and such an objection cannot be taken for the first time at the Appellate stage.
- The strength in the case of the prosecution is the scientific evidence available by way of electronic evidence, Call Details Records, opinion of handwriting expert, opinion of P.W-75, PW79 and P.W-93 and also the DNA reports marked as Exs.P-177, P-178, P-280 and P-281, histopathological report marked as Ex.P-278 and entomology report marked as Ex.P-279.
- The evidence of PW.75 and PW.79 clearly satisfies their expertise and it fulfils the requirement under Section 293(4)(e)

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of Cr.PC and Section 114(e) of the Evidence Act. No questions were put to test their expertise by the defence and their designation and their evidence itself shows that they are experts.

- There was no scope of tampering with M.O.36 till it was operated by PW.79 after the DVR was seized on 15.10.2015. The same is evident from the deposition of P.W-79. The defence did not put any questions in the cross examination of PW.79 regarding the scope of tampering with M.O.36.

70. Mr.T.Lajapathi Roy, learned Senior Counsel appearing on behalf of the victim made the following submissions:

- The entire case has to be analysed under the heads of motive, conspiracy, preparation to commit the crime, execution of the crime, conduct of the accused persons before and after the crime was committed and appreciation of evidence available on record.

- ?Insofar as motive is concerned, one Perumal Murugan authored a novel named "Madhorubagan" and there was an upheaval at Tiruchengode from December 2014 onwards and several persons

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including Maveeran Dheeran Chinnamalai Peravai made complaints on the ground that their community has been denigrated and the said Perumal Murugan was made to tender unconditional apology. This became a major issue and ultimately this Court delivered a judgment on 05.07.2016. It is during this point of time, the instant case happened on 23.06.2015. Thus, the accused persons who belonged to the above Peravai were haters of persons belonging to the lower caste.

- The entire case revolves on communal hatred and bigotry and Al was continuously involved in various incidents of threatening and attacking persons belonging to the lower caste and cases were also registered against him. The same was spoken by P.W-80 and P.W-83.
- The motive for the crime was also attempted to be established through P.W-12 and P.W-13 and even though both these witnesses turned hostile, the answers given by P.W-12 during cross-examination substantiates the contents of Ex.P-13.
- The cross-examination of P.W-39 also established that a meeting was conducted by A.1 on 14.06.2015. The evidence of P.W-39 must be read along with the evidence of P.W-51, in whose presence the

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photographs were downloaded from the Facebook account of P.W-39.

- Insofar as the issue of conspiracy is concerned, the recovery of M.O.76 and M.O.77 from Al by P.W-102 shows that Maveeran Dheeran Chinnamalai Peravai is a communal association and one of the object was to prevent dramatic love and saving the gounder girls falling in the honey trap of the youth. Apart from A.1, all the other accused persons also belonged to the Kongu Vellalar community and the same has been established with the community certificates that were issued to the respective accused persons and the documents marked in that regard.
- The deceased belonged to the Adi Dravidar community and the same has been established through Ex.P146 marked through P.W-50. Thus, it was the hatred towards the Scheduled Caste community, that resulted in A.1 interrogating the deceased and P.W-4 and on coming to know about the community of the deceased and P.W-4, he joined hands with the other accused persons and had done away with the deceased.
- The fact that A.1 interrogated the deceased and P.W-4 was accepted by A.1 when he gave an interview to Puthiya Thalaimurai

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in Nerpadapesu program.

- Conspiracy can be inferred from the background facts of the case.
- Insofar as the preparation to commit the crime is concerned, P.W-4 was taken away from the temple by A.12 and his wife and thereby, she was separated from the deceased.
- A suicide video was made by A.2 and it was transferred to the phone of A.1 and the file was deleted from the phone of A2. The video runs for 30 seconds and the size of the video is 3:14 MB and the same is evident from M.O.47. P.W-79, Expert who examined the mobile phone of A.2 has specifically recorded in the report marked as Ex.P-244 that a file of the size of 3:14 MB which is a video running for 30 seconds has been deleted from the phone of A.2.
- The suicide note marked as Ex.P-36 was written by the deceased under threat and the same has been proved by examining P.W-52 and the report marked as Ex.P-152.
- A.1 arranged for the Mahindra Jeep from his brothers P.W-53 and P.W-55 and a fake number was also prepared and this Jeep was used to shift the deceased to the scene of crime.
- A.1 handed over his mobile phone to his brother A7 and made him switch on the phone of the deceased near KSR Engineering College.

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- Insofar as the execution of the Crime is concerned, the murder of the deceased has been sufficiently established by examining P.W-86 through whom Ex.P-274 was marked. That apart, the evidence of P.W-75 through whom Ex.P-229 was marked also confirms the same.
- The identification of the body of the deceased was also established by examining P.W-8, P.W-9 and P.W-37.
- Insofar as the conduct of the accused persons is concerned, even before the incident took place, they were indulging themselves in moral policing under the banner of Maveeran Dheeran Chinnamalai Peravai. It is only under these circumstances, Al interrogated the deceased and P.W-4 at the temple which he had admitted in the interview.
- Even after the incident, A.1 was absconding and was giving repeated interviews when he was hiding and ultimately, he surrendered after a very long time and adverse inference must be taken by considering such a conduct.
- The accused persons belong to a group who were spreading hatred against persons belonging to the lower caste and they were aware about the caste of the deceased before committing the crime and

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Section 8(b) of the the SC & ST Act will come into operation.

- All attempts were made to derail the trial and ultimately, a Special Public Prosecutor had to be appointed to continue with the trial and he came into the picture only during the examination of P.W-74.
- The sluggishness shown in the investigation should not go in favour of the accused persons and this Court has to take into consideration the totality of the evidence available on record.
- The defence did not put a single question with regard to the hash value, chain of custody etc. during the cross-examination and even without a laying a foundation during trial, these issues are attempted to be brought in at the stage of Appeal.

71. We permitted Mr. Bhavani Mohan, learned Special Public Prosecutor who conducted the trial before the Court below to assist this Court in the above appeals and he made his submissions in line with the submissions of the learned Additional Public Prosecutor and Mr.T.Lajapathi Roy, learned Senior Counsel.

- He submitted that the chain of circumstances has been proved by the prosecution and the last link in the chain of circumstances was the interview given by A1 which was

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substantiated by examining P.W-106 by marking Ex.P-549 and this link strengthened the case of the prosecution with regard to the involvement of A.1 and other accused persons. The learned Special Public Prosecutor also questioned the judgment of the Trial Court acquitting A.4 to A.7 and A.15. It was submitted that their involvement must be mainly based on the application of Section 8 of the SC & ST Act. Totally 21 witnesses turned hostile in this case, and they retracted from the statements recorded from them under Section 164 of CrPC. Their evidence need not be completely discarded, and it can be relied upon to the extent it supports the case of the prosecution.

- The learned Special Public Prosecutor further placed reliance upon the Call Record Details for the calls that took place on 23.06.2015 and 24.06.2015 connecting P.W-4 and P.W-5 to the occurrence. The learned Special Public Prosecutor also read the evidence of P.W-12, P.W-13, P.W-19, P.W-27, P.W-30, P.W-34 and P.W-35 to substantiate his submission that the statements of the hostile witnesses under Section 164 of CrPC can be used not only to contradict under Section 145 of the Evidence Act but also to corroborate under Section 157 of the Evidence Act.

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Hence, to the extent the evidence of hostile witnesses can be used to corroborate the available evidence, to that extent, it can be acted upon.

- The learned Special Public Prosecutor also read the portions of the judgment where the Trial Court had given its reasons for acquitting some of the accused persons and it was contended that those findings are perverse, and it requires the interference of this Court.
- The learned Special Public Prosecutor concluded his arguments by vehemently contending that the instant case is not just a crime but it is a motivated atrocity committed against a member of the Scheduled Caste community and it has to be dealt with strongly by this Court and the case should be viewed from the perspective of a victim, to fulfil the object of the SC & ST Act.

72. These rival submissions fall for our consideration.

73. Both sides copiously referred to reams of case law. We think it unnecessary to burden this judgment with a reference to all of them except wherever necessary.

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VI. DISCUSSION

74. We have carefully considered the submissions on either side and examined the materials on record.

75. When the deceased Gokulraj woke up from his bed on 23.06.2015, little would he have thought that it would be the last day of his life. We are reminded of the famous quote of John Lennon who said that "*There's nowhere you can be that isn't where you're meant to be".* This is exactly what had happened in this case, both for the deceased Gokulraj and the accused persons. They ran into each other at the Ardhanareeshwarar Temple, where the cruel hand of fate took over and manoeuvred the events to a tragic end.

76. It all started on 23.06.2015 at about 11.45 a.m. and almost ended on the same day. The task of this Court is now to re-appreciate the proved facts on record commencing from the sequence of events that took place on and from 23.06.2015, and assess whether the prosecution brought home the case, beyond

reasonable doubt, qua the charges framed against the accused persons. In doing so, we are mindful of the fact that this is a case that rests on circumstantial

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evidence. In keeping with the well settled principles governing this class of cases, we reiterate that what is required is that the prosecution to fully prove every circumstance, and the circumstances so proved must form a chain of evidence so complete that it must exclude every hypothesis other than the guilt of the accused. The five golden principles for proving a case based on circumstantial evidence have been recently reiterated by the Hon'ble Supreme Court in ***Prem Singh v. State (NCT of Delhi).***

77. Circumstantial evidence may comprise of unrelated facts that, when considered together, can be used to infer a conclusion about something unknown. Circumstantial evidence plays a pivotal role in a criminal case. In sensational cases, the eyewitnesses may turn turtle due to various reasons or may exaggerate about the incident to such an extent that reliance upon their evidence becomes unsafe and, in such cases, it is the circumstantial evidence which has come to the aid of the Court to take a final decision. Keeping all this in mind the aforesaid principles, we now turn to the evidence.

78. The chain of circumstances that have been projected by the prosecution are as follows:

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i. The deceased Gokulraj meeting his friend Swathi (P.W-4) and the fact that they together went to the Ardhanareeshwarar Temple at Tiruchengode.

ii. The deceased Gokulraj goes missing and hisbody, with the head decapitated, is recovered from the railway track.

iii. The cause of Gokulraj's death is proved to be homicidal.

iv. The motive behind the crime.

v. Conspiracy among the accused persons which also includes an attempt to project a false theory as if the deceased committed suicide.

vi. Last seen theory.

vii. The conduct of Yuvraj- A1 and the statements made by him to the media during the period of abscondence at the time of investigation.

viii. Recovery of incriminating materials and ;

ix. The scientific evidence/ electronic evidence projected as the fulcrum to prove the case.

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i. <u>The deceased Gokulraj meeting his friend Swathi (P.W-4) and both of them going to the Ardhanareeshwarar Temple at Tiruchengode</u>

79. P.W-1 is the mother of the deceased. She has stated in her evidence that her son was studying at KSR Engineering College at Tiruchengode. On 23.06.2015, the deceased left his house in the morning at about 06.00 a.m. stating that he is going to meet his friend. P.W-3 is the brother of the deceased and he has also stated that the deceased Gokulraj left the house around 6.30 a.m. on 23.06.2015. He has further stated in his evidence that the deceased Gokulraj had completed his engineering course in April 2015.

80. P.W-4 Swathi was also a student who had completed her engineering graduation at KSR Engineering College at Tiruchengode. During the course of investigation, Section 164 statement was recorded from this witness. At that time, on oath, she has stated that the deceased Gokulraj informed her that he wants some money to purchase a new mobile phone. Pursuant to the same, on 23.06.2015, the deceased Gokulraj called P.W-4 and asked her to come to Tiruchengode to enable him to receive the money from her. Accordingly, P.W-4 met the deceased Gokulraj at around 09.45 a.m. near Tiruchengode bus stand. Thereafter, on the request made by the deceased, she accompanied him to the

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Ardhanareeshwarar temple. However, this witness turned hostile when she was examined in the Court and she retracted her statement under Section 164 Cr.P.C.

81. To establish the contact between the deceased Gokulraj and P.W-4, the prosecution has relied upon the CDR call records and the evidence of the service providers. The deceased Gokulraj was using the mobile phone which was marked as M.O.8. This mobile phone had a double sim facility. One of the mobile number that was used by the deceased viz., 7418809718 stood in the name of one Jayaraman. It is immaterial as to why the said Jayaraman was not examined by the prosecution or as to the effect of the evidence of the father of Jayaraman, who was examined as P.W-69. The fact remains that the sim card was found in the mobile phone recovered from the deceased and hence, the messages sent, or the phone calls made through this mobile number can be safely taken to be the one made from the mobile of the deceased Gokulraj marked as M.O.8.

82. The mobile number 9566949781 stood in the name of P.W-5, who is none other than the mother of P.W-4 Swathi. The fact that this mobile number stood in the name of P.W-5 has been established by the prosecution. It is not uncommon for a daughter to use the mobile number standing in the name of her mother. Hence, the deceased had contacted P.W-4 from mobile number

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7418809718 to mobile number 9566949781. The contact that was made by the deceased on 23.06.2015 to P.W-4 Swathi has been established through Ex.P-199 and Ex.P-504. This took place at about 08.22 a.m. for around 41 seconds. Similarly, there was yet another phone conversation that took place at about 09.31 a.m. for around 43 seconds and the same has been established through Ex.P-199 and Ex.P-505. This evidence cannot be simply thrown overboard despite the attempt made by P.W-4 to subsequently project a case as if she never contacted the deceased Gokulraj on 23.06.2015.

83. In this backdrop, the evidence of P.W-6 also gains significance. He was the classmate of the deceased Gokulraj at KSR Engineering College, Tiruchengode. He has stated in his evidence that he was contacted by P.W-3, who enquired regarding the whereabouts of the deceased Gokulraj and that he got in touch with P.W-4, who was also a classmate. At that time P.W-4 informed him about the deceased getting in touch with her and asking for money to buy a new mobile phone and they met at the Tiruchengode bus stand and going to the Ardhanareeshwarar temple.

84. The other important witness who was examined on the side of the prosecution was P.W-76, Kathiresan. He was also a student of KSR Engineering

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College for the period from 2014-2018. The deceased Gokulraj was senior to PW-76 in the same college. On 23.06.2015, P.W-76 had travelled in the same bus in which the deceased was travelling and at that point of time, the deceased had told him the purpose for which he was going to Tiruchengode. He also found the deceased getting down at the Tiruchengode bus stand at around 08:15 to 08:20 hrs.

85. It is the contention of the learned Senior Counsel for the appellants that the deceased could not have travelled in the college bus since he had completed his course by then. According to them this casts a doubt on the version given by P.W-76. In the considered view of this Court, the deceased had travelled in the college bus regularly when he was doing the course and there is nothing unnatural in the deceased being allowed to travel in the college bus after the completion of the course. This is more so since the prosecution had established that the deceased was a student of KSR Engineering College through Ex.P-40 and Ex.P-42 and those exhibits also clearly speak about the residential address of the deceased who was living with P.W-1 and P.W-3. The Trial Court had dealt with this issue in detail and had arrived at a conclusion that the deceased travelled along with P.W-76. We do not find any perversity in the same. A cumulative reading of the evidence referred supra clearly establishes that the

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deceased Gokulraj had left his house on 23.06.2015 in the morning and he had got in touch with P.W-4 and ultimately, he had reached the Tiruchengode bus stand.

86.Submissions were made before us on the scope of Section 6 of Evidence Act and the rule of *res gestae*. The Court below has also dealt with the same in its judgment. The only reason the prosecution presses in aid this principle is to substantiate the fact that P.W-4 had informed the incident to P.W-3 and PW-88 (the brother of PW-1). PW-4 had later turned hostile. Therefore, according to the prosecution, the information provided by P.W-4 was done contemporaneously and immediately after the incident and hence, is a relevant fact.

87. The rule of *res gestae* embodied in Section 6 is an exception to the rule of hearsay evidence. It is recognised as a relevant fact if the statement is made contemporaneously with the act which constitutes the offence or at least immediately thereafter. Hence, spontaneity and immediacy of the statement is the test. In the considered view of this Court, on facts of this case it may not be necessary to resort to the principle of res gestae.

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88. Admittedly, P.W-4 had turned hostile. However, it is a settled position of law that even when a witness turns hostile, it is the duty of the Court to carefully consider the testimony and cull out that part of the evidence to the extent it is creditworthy. There is no rule that the entire version of a hostile witness must be thrown overboard. The law is otherwise.

89. In this connection, it is necessary to take note of a recent decision of the Constitution Bench of the Supreme Court where the scope of Section 154 of the Evidence Act was dealt with in ***Neeraj Dutta*** *v.* ***State, 2023 (1) MWN (Crl) 343*** where the applicable principles have been encapsulated as under:

> *"63. Before answering the question under reference, we deem it necessary to clarify on one aspect of the matter and that is with regard to "hostile witness".*
>
> *64.Learned senior counsel Shri Nagamuthu submitted that the expression "hostile witness" must be read in the context of Section 154 of the Evidence Act. Section 154 of the Evidence Act states that the court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. It further states that the Section does not disentitle the person so permitted to rely on any part of the evidence of such witness. For immediate reference, Section 154 of the Evidence Act is extracted as under:*

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*"**154. Question by party to his own witness.—** (1) The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.*

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such Witness."

The said Section was amended with effect from 16.04.2006 and sub-section (2) of Section 154 was added from the said date while the original Section was renumbered as sub-section (1) of Section 154.

65.Learned senior counsel Shri Nagamuthu submitted that when the prosecution examines a witness who does not support the case of the prosecution he cannot be "declared" to be a "hostile witness" and his evidence cannot be discarded as a whole. Although, permission may be given by the Court to such a witness to be cross-examined by the prosecution as per sub-section (2) of Section 154 of the Evidence Act, it is not necessary to declare such a witness as a "hostile witness". This is because a statement of a "hostile witness" can be examined to the extent that it supports the case of Prosecutor.

*66.In this regard, our attention was drawn to **Sat Paul vs. Delhi Administration, 1976 (1) SCC 727 ("Sat Paul")**, which is a case arising under the 1947 Act wherein this Court speaking through Sarkaria, J. has made pertinent observations regarding the credibility of a hostile witness. It was*

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observed in paragraph 30 of the judgment that the terms "hostile witness", "adverse witness", "unfavourable witness", "unwilling witness" are all terms of English law. At Common law, if a witness exhibited manifest antipathy, by his demeanour, answers and attitude, to the cause of the party calling him, the party was not, as a general rule, permitted to contradict him with his previous inconsistent statements, nor allowed to impeach his credit by general evidence of bad character. It was observed in paragraph 33 that the rigidity of the rule prohibiting a party to discredit or contradict its own witness was to an extent relaxed by evolving the terms "hostile witness" and "unfavourable witness" and by attempting to draw a distinction between the two categories. A "hostile witness" is described as one who is not desirous of telling the truth at the instance of the party calling him, and an "unfavourable witness" is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves an opposite fact. In the context of Sections 142 and 154 of the Evidence Act, this Court observed in paragraphs 38 and 52 as under:

*"**38.**To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, "unfavourable" witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to*

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cross-examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile". Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in Baikuntha Nath vs. Prasannamoyi AIR 1922 PC 409. The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witnesses' demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English courts.

52. *From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross- examined and contradicted with the leave of the court,*

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by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

67. Therefore, this Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the

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> *case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence."*

90. In a country where the witnesses turn hostile at the drop of a hat, Courts must be vigilant and act upon those portions which are creditworthy and which can be used in the light of the other evidence available on record and the attitude of completely discarding the evidence of a hostile witness, in some cases, can derail the course of justice. That apart, it is well settled that the principle *falsus in uno falsus* in *omnibus* does not apply in this country.

91. The further case of the prosecution is that the deceased and P.W-4 proceeded from the Tiruchengode bus stand to the Ardhanareeshawarar temple which is situated at the top of a hill. The deceased and P.W-4 travelled in a bus to Ardhanareeshwarar temple. To substantiate that they travelled by bus and came to the Ardhanareeshwarar temple, Ex.P-35 was marked through P.W-18 and Ex.P-40 was marked through P.W-21.

92. The most crucial evidence to establish that the deceased Gokulraj and P.W-4 Swathi came to the Ardhanareeshwarar temple, was the CCTV footage

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marked as Ex.P-297 (M.O.36). The footage starts from camera 1 at 10:52:53 am wherein the deceased and P.W-4 are found entering the temple from the western entrance. It will suffice to confine the discussion on the CCTV footage upto this point for the sake of deciding this facet of the circumstantial evidence. The evidentiary value of the CCTV footage and the attendant submissions as regards the other facets will be discussed, *infra.*

93. From the aforesaid proved facts, it is clear that the deceased and P.W-4 came into the Ardhanareeshwarar temple at about 10:52 a.m. Even though P.W-4 attempted to completely deny the fact that she went to the Ardhanareeshwarar temple along with the deceased, the falsity in her evidence is apparent from the very fact that she refused to identify herself in the CCTV footage and whereas, she was able to identify the deceased Gokulraj. The way P.W-4 had tendered false evidence before the Court and the steps taken against P.W-4 in this regard is also discussed seperately, *infra*.

94. From the above discussion, we are of the considered opinion that the first circumstance viz., the deceased Gokulraj had met his friend Swathi (P.W-4) and both of them had gone to the Ardhanareeshwarar Temple at Tiruchengode stands established.

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ii. <u>The deceased Gokulraj goes missing and the recovery of his body from the railway track</u>

95. P.W-1, who is the mother of the deceased has stated in her evidence that the deceased Gokulraj used to usually come back home for lunch. On 23.06.2015, P.W-1 had called the deceased at around 10.00 a.m. and the deceased is said to have informed her that he is with his friend and had spoken to her for nearly 5 minutes. The deceased did not return home till late evening and hence, P.W-1 informed her elder son, P.W-3. Again, she attempted to call to the mobile phone of the deceased Gokulraj at about 08.45 p.m., and someone else attended this call and quickly disconnected the phone call. The prosecution has marked Ex.P-506 to substantiate this phone call through P.W-102. Thereafter, P.W-1 called P.W-76 and he informed P.W-1 that the deceased Gokulraj was travelling in the same bus and he got down in the bus stand at Tiruchengode. Thereafter, P.W-1 got an information on 24.06.2015 at about 04.00 a.m., when she got in touch with P.W-6 and P.W-6 informed that the deceased along with P.W-4 went to Ardhanareeshwarar Temple and the accused persons had also come to the same temple and that they kidnapped the deceased. P.W-1 gave a complaint (Ex.P1) to the Tiruchengode Town Police Station on 24.06.2015 at about 02.00 p.m. This complaint was acted upon by P.W-98 and an FIR came to

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be registered in Crime No.289 of 2015 (Ex.P-334). Thereafter, at about 04.00 p.m., P.W-1 was informed about the dead body of her son found near a railway track.

96. P.W-3, who is the elder brother of the deceased has stated that he came back home from work on 23.06.2015 at about 06.00 - 07.00 p.m., and he also started taking steps to find the whereabouts of the deceased. P.W-3 also spoke with P.W-76, who informed about his meeting with the deceased Gokulraj in the bus in the morning hours of 23.06.2015. On 24.06.2015, P.W-3 got in touch with P.W-6 and he was informed by P.W-6 about the deceased going along with P.W-4 to Ardhanareeshwarar temple and the deceased being kidnapped by the accused persons. P.W-6 also gave the mobile number of the mother of Swathi (P.W-5) and P.W-3 called in that number at about 08.00 a.m. P.W-4 attended the call and P.W-3 had put the call on speaker. This conversation was recorded by P.W-26 in his mobile phone. The mobile phone of P.W-26 was marked as M.O.41. During that phone call, P.W-4 explained as to how she had gone along with the deceased Gokulraj to the Ardhanareeshwarar temple and how the accused persons accosted and thereafter kidnapped the deceased. P.W-26, after recording the conversation, had sent the same through Bluetooth to the mobile phone of P.W-3. The conversation between P.W-3 and P.W-4 was

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downloaded in a CD and it was marked as M.O.94 through P.W-79. The learned Counsel for the appellant has questioned the admissibility of M.O.94. At this stage, it will suffice to hold that M.O.94 can be acted upon and the reasons for doing so have been articulated at a later part of this judgment dealing with the admissibility of electronic records.

97. During the call, P.W-3 requested P.W-4 to come to Tiruchengode and P.W-3 along with P.W-1 met P.W-4 and P.W-6 at Tiruchengode. Thereafter, they went to the police station to give the complaint. Even in the complaint marked as Ex.P1, the phone numbers of P.W-4 and her mother, P.W-5 had been noted. P.W-3 also speaks about the information received by them on 24.06.2015 at about 04.00 p.m., regarding the dead body of the deceased found near the railway track.

98. P.W-4, who was examined by the prosecution turned hostile. She gives a version as if she did not go along with P.W-1 and P.W-3 and that she got a phone call from the police station and thereafter, she went along with her mother to the police station. P.W-4 retracted from the version given by her in the Section 164 Cr.P.C marked as Ex.P-2. P.W-4 had given the entire details as to what happened in the temple while recording her statement under Section 164 CrPC.

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She also speaks about the fact that the deceased Gokulraj was compelled to go along with two or three persons and was detained by the accused persons. In the meantime, P.W-4 has also stated that her address and phone number was also taken from her and later she was sent along with two other persons from the temple.

99. The presence of P.W-4 in the police station was confirmed by P.W-1, who in the course of cross examination has clearly stated that the complaint Ex.P-1 was written only based on the version given by P.W-4. The incident that took place in the temple could not have been spoken to by P.W-1, P.W-3, P.W-6, P.W-26, P.W-76 and P.W-88, without they being informed about the same by P.W-4 on the next day i.e., on 24.06.2015. The CCTV footages started coming in the media only thereafter and hence, the statement of P.W-4 recorded under Section 164 of Cr.PC can, at the very least, be taken as a corroborative piece of evidence.

100. The evidence of P.W-6 and P.W-26 also assumes significance as their testimony corroborates the evidence of P.W-1 and P.W-3 regarding the fact that Gokulraj had gone missing and the steps taken to find the whereabouts and ultimately, the news that was received to the effect that body of the deceased

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was found near a railway track.

101. The other limb of this issue pertains to the dead body of the deceased Gokulraj found in the railway track. The body of the deceased was first seen by P.W-37 who in his evidence, states that he is working as a gang man in the railways and he found the dead body of the deceased and he immediately informed about the same to the station master, who was examined as P.W-2. P.W-15, who was examined by the prosecution also accompanied P.W-37 and he speaks about the dead body found in the railway track.

102. The station master, P.W-2, has stated in his evidence that he went to the concerned place on getting the information from P.W-37 and found the dead body. He immediately informed about this to P.W-7. P.W-7, in his evidence, states that he gave a complaint (Ex.P-9) to the railway police. On receipt of the same, P.W-92, who was working as the Special Sub-Inspector of Police, registered an FIR (Ex.P-166) in Crime No.90 of 2015 under Section 174 of Cr.P.C. The dead body of the deceased found near the railway track has also been spoken to by P.W-8 and P.W-9.

103. P.W-96, in his evidence states that he took over the investigation from P.W-92 and at that point of time, P.W-92 had already inspected the place

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and prepared the rough sketch and the observation mahazar marked as Ex.P-299 and Ex.P-27 respectively. He had also recovered the clothes belonging to the deceased, his ID card, mobile phone and bus ticket. The same was marked as M.O.1 to M.O.6, M.O.8 and M.O.40. P.W-92 also recovered the suicide note which was marked as Ex.P-36. P.W-92 recorded the place where the dead body was found in his mobile phone. It was captured in a memory card marked as Ex.P-301. The Section 65-B certificate was also marked as Ex.P-300.

104. The investigation was thereafter taken up by P.W-97. He has stated in his evidence that based on the order passed by the Railway Superintendent of Police, the entire file was handed over to DSP Vishnupriya under Ex.P-333.

105. Insofar as the identity of the deceased as Gokulraj, the prosecution has relied upon the scientific evidence of P.W-75 through whom Ex.P-229 series was marked. This is apart from the identification of the deceased by P.W-1, who is the mother of the deceased and also the material objects that were recovered from the deceased, which further confirmed that the dead body found in the railway track was indeed that of the deceased Gokulraj. The prosecution also placed reliance upon the evidence of P.W-61, who is the scientific expert who speaks about the DNA test that was conducted by her. Ex.P-177 and Ex.P-178

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were marked through this witness. She has stated in the report that the relationship between P.W-1 and the deceased Gokulraj (mother and son) was established. Even though this witness was cross-examined, nothing was elicited to discredit her testimony.

106. The clothes that were recovered from the body of the deceased were sent for analysis to test the blood group and P.W-68, in her evidence, has spoken to the effect that the blood group of the deceased and the blood stains that were found in the clothes were matching ('O' Group). Ex.P-218 and Ex.P-219 were also marked through P.W-68. Some attempt was made to discredit the scientific evidence based on the identity card that was marked as M.O.6 wherein it was mentioned as 'B' Group. The Court below has discussed this issue in detail, and we find that the identity card cannot be put against a report prepared by an expert which cannot simply be thrown overboard on conjectures.

107. The above discussion, after considering the available evidence we are satisfied that the fact that the deceased Gokulraj went missing on 23.06.2015 and his dead body was thereafter recovered from the railway track on 24.06.2015 clearly stands established.

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iii. Cause of death was homicide

108. We now come to the third circumstance projected by the prosecution which is that the cause of death was homicide and not suicide. The body of the deceased Gokulraj was found on a railway track between the Cauvery and Anangur Railway Station between 383/11 - 383/13 kms upline. The head of the deceased was found severed and it was lying outside the railway track and the torso was found in the middle of the track. While dealing with the entire sequence of events (paras 6-59, supra), this Court has already discussed about who all saw the body and what steps were taken thereafter. Hence, we refrain from repeating them all over again. The head of the deceased was found dismembered from the torso and it was found flat and flabby like a mask with major part of the scalp, bones, brain and left eye missing.

109. To begin with, there was only a suspicion that the deceased was killed and infact, when the inquest reports were prepared by DSP Vishnupriya, which were marked as Ex.P-540 to Ex.P-542, there were even indications that it could be a case of suicide. A fair amount of submission on the side of the appellants/accused touched upon this fact to project a case as if there was an alternative hypothesis that the death could have taken place due to accident/suicide. It was further submitted that the body was lying in the railway track and several trains had passed over the body and whatever injuries were

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noted in the postmortem, can also be attributed towards injuries sustained due to trains passing over the dead body. It was also submitted that the cut injuries, as was attempted to be projected by the prosecution, cannot be sustained since there was nothing to indicate that there was cut in the blood vessels or the vital organs of the deceased.

110. This Court has already extracted the injuries noted at the time of the postmortem separately on the torso and on the head. It is seen from the records that a Habeas Corpus Petition was filed before this Court and pursuant to the orders passed thereon in that petition, a special team of doctors was formed to perform the autopsy. P.W-85, P.W-86 and one Dr. Sangeetha conducted the autopsy at Salem Mohan Kumaramangalam Medical College and Hospital. These doctors examined the head and the torso separately and gave a final opinion. Before examining the final opinion tendered by the doctors, it must be borne in mind that if it was a case of a train running over the head, the breadth of the rail head and rolling of the guide wheel over it, would grind about 7.5 cms of the neck portion and it would have been completely smashed. Whereas, in the instant case, it is found from the report that the neck portion of the deceased remained intact and clean-cut injuries were found in the neck. This completely knocks the wind of the sails of the suggested hypothesis of the defence that the

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deceased could have been mowed down by a running train.

111. The doctors were also subjected to detailed cross-examination. Many ante-mortem injuries like breaking of the ribs, contusion, swelling of scrotum indicate that the deceased was subjected to physical violence. There was also no indication of any grease or oil in the clothes that were recovered from the body of the deceased, which is yet another strong indication that the deceased was not run over by a train. One of the injuries which is very disturbing is the sliced cut injury over the tongue which has virtually divided the tongue and has been noted as Injury Nos.15 and 16 while examining the head.

112. A lot was argued about the presence of L3 stage larvae and to build up a case as if the incident would have taken place 3½ days prior to 24.06.2015. A careful reading of the post mortem report and Ex.P-279 shows that maggots were present in the body and pupae and flies were absent. In the 22nd Edition of Modi's Medical Jurisprudence we find the following discussion:

> *"Flies, such as common houseflies and blowflies, are attracted to the body, and lay their eggs, especially in the open wounds and natural orifices. The eggs hatch into maggots or larvae within eight to twenty-four hours during hot weather. The maggots crawl into the interior*

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of the body and helps in destroying the soft tissues. Sometimes, maggots appear even before death, if a person has ulcers on him. The maggots become pupae in four or five days, developing through about four stages called instars. The pupae develop into adult flies in the course of three to five days. They are of some help in estimating the time of death; ability to identify the type and knowledge of their exact life history being essential.

113. From the aforesaid, it is clear that the eggs hatch into maggots or larvae within 8-24 hours. Maggots becomes pupae in four or five days. If this is considered, the time of the death as stated by P.W-85 to have taken place 3-4 days prior to autopsy, perfectly matches the time when the murder had taken place as stated by the prosecution. The Trial Court also considered the answers that were given by the doctor P.W-85 for the questionnaire that was given by DSP Vishnupriya. The Trial Court also took into consideration Ex.P-274 to Ex.P-281 based on which the final opinion was given by P.W-85 along with Dr. Sangeetha on 02.01.2016. The Trial Court also took into consideration the evidence of P.W-75 in this regard along with Ex.P-229, who has explained about the scenario as to what would have been the effect of the head getting dismembered from the body if it is run over by a train.

114. On considering the evidence available on record, the Trial Court

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concluded that it is a case of death due to homicide and not due to suicide. We are unable to find any perversity in this finding. Upon an independent re-appraisal of evidence and the injuries that have been noted in the autopsy report marked as Ex.P-273, the reports marked as Ex.P-274 to Ex.P-281 and the evidence of P.W-85 and P.W-75 we have no hesitation in concurring with the findings of the learned trial judge that this was a case of homicide and not suicide. Thus, the third circumstance also stands fully established.

iv. <u>The motive behind the crime</u>

115. The fourth circumstance is the presence of a motive on the part of the accused persons to do away with the deceased. The prosecution has attributed motive as against the accused persons mainly on the ground that the accused were caste Hindus belonging to the Kongu Vellalar community. To substantiate the same, the prosecution has relied upon the community certificates that were marked as Ex.P-129 to Ex.P-145 which were marked through P.W-45 to P.W-49. That apart, P.W-4 also belongs to the Kongu Vellalar community which has been substantiated through Ex.P133 marked through P.W-46. The deceased Gokulraj belonged to the Scheduled Caste community which is evident from the community certificate marked as Ex.P146 through P.W-50. It is further corroborated by Ex.P-40 and Ex.P-42 marked through P.W-10

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and P.W-20.

116. According to the prosecution, A.1 is the leader of Maveeran Dheeran Chinnamalai Peravai which is an organisation founded exclusively keeping in mind the interests of persons belonging to the Kongu Vellalar community. The further case of the prosecution is that at the relevant point of time, there was extreme communal disturbance largely on account of the novel published by Perumal Murugan titled "*Madhorubagan".*

117. The prosecution contends that the Dheeran Chinnamalai Peravai headed by A.1 was openly propagating that the women belonging to the Gounder community should not fall in the trap of having love affairs with persons belonging to other communities. There were criminal cases pending pertaining to certain agitation/protest and road roko done by persons belonging to the Kongu Vellalar community in which A1 was shown as an accused person. P.W-80 who is the inspector of Police, talks about two criminal cases in this regard in Crime No.390 of 2014 and Crime No.400 of 2014 and in both cases, A.1 in the present case has been ranked as A.4. On this basis, the prosecution seeks to project that A.1 and his coterie were men obsessed with caste hatred.

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118. A meeting is said to have been held on 07.06.2015 at Karur in which A.1 attended as a special guest. The pamphlet that was distributed was marked as Ex.P-13, which discloses the agenda of the meeting. The printing press owner who was examined as P.W-12 and the owner of the godown which was arranged for the meeting and who was examined as P.W-13, turned hostile. Even though P.W-12 turned hostile, he admitted to the fact that the mobile number that was printed in Ex.P-13 is his mobile number.

119. A.1 who had participated in the live telecast program Nerpadapesu on 10.10.2015 made certain statements which is evident from Ex.C.9 and Ex.P-549 which was the interview that was given to P.W-33. It clearly shows his affinity towards the caste and his pride for belonging to the Kongu Vellalar community. It is in this interview that A1 has categorically admitted seeing the deceased Gokulraj and P.W-4 together at Ardhanareeshwarar temple, Tiruchengode. A.1 infact addresses in plural as "அறிவுறை சொல்லி அனுப்பினோம்" which shows that apart from A.1, there were also others in the temple.

120. There is a reference to yet another meeting that was held on 14.06.2015 at Namakkal, which was arranged by P.W-39 and he admits the participation of A1 in the said meeting. This is further corroborated by the

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evidence of P.W-51.

121. The prosecution has also relied upon Ex.P-147 to Ex.P-150 which were the Facebook posts that were downloaded, which were spoken to by P.W-51. The seizure of M.O.76, M.O.80, M.O.81 and M.O.82 from the office of A1 is also relied upon by the prosecution as a relevant piece of evidence to substantiate the communal hatred and bigotry to be the driving forces behind this gruesome crime.

122. P.W-83 who is the Inspector of Police has deposed about charge sheet being filed in a particular criminal case where A.1 is shown as the accused person and he talks about A.1 indulging in damaging a shed erected in front of the house of one MeleiPalaniyappan since he supported an author of the book named "Puliyur Murugesan". Infact, the said Melei Palaniyappan was made to issue a denial pertaining to the incident which was marked as Ex.D-2. P.W-40 who was the former District Secretary of the Peravai at Karur turned hostile and he admits to the fact that a meeting was held in Karur hotel in the fifth month.

123. Ex.P-269 was also marked through P.W-83 to bring home the fact that there was a Gounder community pride which was the driving force for Maveeran Dheeran Chinnamalai Peravai.

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124. The Trial Court has discussed this issue in detail at Paragraphs 37 and 38 of the judgment and has come to a conclusion that the only motive to the crime was that the deceased belonged to a Scheduled Caste community and P.W-4 belonged to Gounder community and that the accused persons were not agreeable to any relationship between P.W-4 and the deceased who was a member of the Scheduled Caste community which went against the prime objectives of the Maveeran Dheeran Chinnamalai Peravai. Accordingly, the Trial Court came to a categoric conclusion that there was a strong motive for the accused persons to do away with the deceased Gokulraj. This Court is in complete agreement with the finding rendered by the Trial Court.

125. When it comes to establishing affinity and pride of persons belonging to a particular community, and that too in a communally charged atmosphere, it is quite natural that all the witnesses will only turn hostile and the same has also happened in the present case. But, the overall materials that have been placed before the Court when considered along with the statements made by A.1 during the interview in the news channel clearly establishes the fact that Maveeran Dheeran Chinnamalai Peravai is a communal association which was headed by A.1 and it had certain objectives to promote unity among the Gounder

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community and also to prevent the women belonging to the Gounder community from falling into the honey trap of youth belonging to different communities.

126. While assessing evidence of this nature, judges are not expected to make their assessments sitting in ivory towers. It is imperative that the judge must be aware of the ground realities and take judicial notice of what is happening around them. The Trial Court on considering the evidence available on record took note of all the materials placed before it and also the fact that all the accused persons belonged to a caste Hindu community and the deceased belonged to a Scheduled Caste community and on appreciation of evidence, the Trial Court came to the conclusion that caste hatred was the main driving factor supplying the motive behind the gruesome crime. We find absolutely no perversity or illegality in the aforesaid conclusion.

127. The fact that all the accused persons belonged to a particular community whose pride was sought to be projected by the association headed by A.1 cannot be taken to be a mere coincidence but on the other hand, it furnishes

a clear design to establish the commonality among the accused persons all of whom belonged to the Kongu Vellalar community. P.W-4 also belonged to the

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same community and when she was found talking with the deceased who belonged to Scheduled Caste community, the same became a trigger point where the supposed pride of the community started rearing its ugly head. It is here that bigotry took over. We are, therefore, of the considered view that the motive behind the crime has been sufficiently proved by the prosecution beyond reasonable doubt. Thus, the fourth circumstance projected by the prosecution also stand proved.

V. Conspiracy among the accused persons which also includes an attempt to project a false theory as if the deceased committed suicide

128. The case of the prosecution is that the accused persons viz. A1, A2, A3, A8 to A12 and one Jothimani (wife of A.12) hatched a conspiracy in Tiruchengode temple after becoming aware of the community status of the deceased Gokulaj and P.W-4 and hence decided to do away with the deceased. P.W-4 was taken away from the temple by A12 and his wife, whereas the deceased was taken away from the temple by A1 to A3 and A8 to A11.

129. The fact of interrogation of the deceased Gokulraj is admitted by A.1 when he spoke in the Nerpadapesu program conducted by the news channel. We had the opportunity to hear this program when we played from Ex.P-549 CD

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which was marked through P.W-106. We observed from the recording that A1 has admitted the fact that he had interacted with the deceased Gokulraj and P.W-4 at Tiruchengode Ardhanareeshwarar temple. The participation of A1 in the program on 10.10.2015 was voluntary. Even though he states that there was some dispute between P.W-4 and the deceased, which was attempted to be sorted out, we find that the presence of A1 and others at the Temple can be gathered from the statement of A1 himself. We have already taken note of the statement "அறிவுறை சொல்லி அனுப்பினோம்" made by A.1 which shows the presence of A.1 and others in the temple and their interaction with the deceased and P.W-4.

130. The presence of the accused persons in the temple is further substantiated by CCTV footage marked as Ex.P-297. This Court has already given a finding that Ex.P-297 can be acted upon and the CCTV footages that were exhibited were also seen by the Trial Court and the accused persons found in the CCTV footages were specifically identified. The Trial Court also had the advantage of physically seeing the accused persons in the Court during the course of trial and parallelly looking at them in the CCTV footages. The same is the case with the presence of P.W-4 also. That apart, the Trial Court also had the advantage of the evidence of P.W-93 who had compared the faces of those

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persons found in the CCTV footages with the photographs of the accused persons, P.W-4 and also the deceased Gokulraj. She has explained in her evidence as to how she identified each and every person from the CCTV footage. The evidence of P.W-93 who is the scientific assistant, has been dealt with by the Trial Court in detail along with the report marked as Ex.P-328. The identity of the persons as contained in the report was further confirmed by the Trial Court which had the advantage of looking at the CCTV footages as well as the accused persons in the Court. In view of the same, there is absolutely no dispute with regard to the identity of the accused persons qua the CCTV footages. This will equally apply to P.W-4 also and in her case, we had the added advantage of calling her to the Court for recording her additional evidence and while doing so, we also identified P.W-4 in the CCTV footages that was played in the open Court while hearing these Appeals.

131. We repeatedly parsed through the CCTV footages. It was seen that the deceased Gokulraj and P.W-4 enter the temple together from the western gate and their movement inside the temple was also seen till they reached the sanctum sanctorum. We also saw the accused persons A1, A2, A3, A8 to A12 and the wife of A12 (Jothimani) getting into the temple. At about 11:37 a.m., we were able to see that A3 was going out of the temple in the western gate talking

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in a mobile phone and he is followed by A2. Both were seen near the western entrance for some time. Thereafter, both A2 and A3 get back into the temple from the western gate at about 11:39 a.m. Once again, we saw A3 and A2 going out of the temple and entering the temple between 11:42 a.m. to 11:50 a.m. It is quite apparent that hectic activities were going on when the accused persons were seen moving out of the temple at about 11:57 a.m., and at that point of time, P.W-4 is seen going along with A12 and his wife Jothimani and they are leaving the temple from the western gate. Once again, the other accused persons viz. A1 to A3 and A8 to A11 are seen coming back to the temple from the western gate along with the deceased Gokulraj.

132. The Trial Court has carefully considered the CCTV footages and the activities that took place in the temple from 10:52 a.m. to 11:58 a.m. Thus, the presence of the deceased Gokulraj, his friend P.W-4, A1 to A3 and A8 to A12 has been sufficiently established by the silent witness viz. the CCTV footage.

133. On carefully watching the CCTV footage, we found that Swathi P.W-4 was separated from the deceased Gokulraj and she was taken away from the temple by A12 and his wife Jothimani. The deceased Gokulraj is seen to be

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surrounded by the accused persons and they are going into the temple from the western gate.

134. A contention was raised at the time of hearing to the effect that there was no evidence available to show that the deceased Gokulraj was thereafter taken out of the temple and in view of the same, it was submitted that the accused persons coming into the temple with the deceased by itself is not aggravating evidence.

135. Exercising our powers under Section 310 Cr.PC, we went for a spot inspection during the pendency of the appeals not only to find out about the availability of the CCTV cameras but also to see the number of entrances that are available for the temple and as to whether any of the entrance is not covered by a CCTV camera. We found that the main entrance is from the western gate. For those who are coming to the temple in vehicles, this is the preferred entry gate. There is also an entrance from the northern gate which is accessible through steps and for those who want to climb up the steps and reach the temple. Even for those who come in the vehicle and get down near the western gate, they can walk from the western gate and enter through the northern gate. At the relevant point of time, no CCTV camera was available in the northern gate. Ultimately,

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persons coming from the western gate and the northern gate are led towards the sanctum sanctorum in the same lane. There is an exit gate on the southern side of the temple and also an eastern gate which remained closed, and this gate leads to the nearby pond belonging to the temple. No camera was available in this exit also.

136. Our spot inspection helped us in ascertaining the fact that the accused persons, on getting into the temple, after surrounding the deceased Gokulraj from the western gate at about 11:58 a.m., could have easily moved out of the temple either through the northern gate or through the eastern gate, which actually leads to the car parking space. Hence, the exit of the accused persons along with the deceased Gokulraj out of the temple, without being captured in the CCTV cameras, could have happened from the northern gate or the eastern gate.

137. The next aggravating circumstance to prove the conspiracy is the suicide video (M.O.47 and M.O.89) and the suicide note Ex.P-36.The contents of the suicide video and the contents of the suicide note matches. On analysing the suicide video, P.W-52 has clearly stated in his evidence as well as in his report marked as Ex.P-152 that the video was recorded by putting the deceased on

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threat. We do not find any ground to disbelieve the evidence of P.W-52 and the report marked through this witness.

138. The suicide note (Ex.P-36) was found to be in the handwriting of the deceased which is evident from the deposition of P.W-64 through whom the report Ex.P207 was marked. The suicide video and the suicide note also forms part of the conspiracy in order to project a defence as if the deceased committed suicide. This Court has already analysed and given a finding supra that the deceased died only due to homicide. Hence, the suicide video and the suicide note can only be taken as aggravating evidence as against the accused persons which formed part of the conspiracy.

139. According to the prosecution, A1 had arranged a Mahindra Jeep from P.W-53 and P.W-55 and a fake number was stuck to this Jeep. It is in this Jeep, the accused persons are said to have shifted the deceased and he was taken to the railway track between Cauvery railway station and Anangur Railway Station, where the murder took place. P.W-53 has deposed in his evidence that A1 had sought for his Jeep for shifting submersible motor and the Jeep was sent to A1 on 23.06.2015 and it was handed over the next day at about 07.00 a.m. P.W-53 has also admitted this fact while his Section 164 statement was recorded and he

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had stated that A1 called him for borrowing the Jeep.

140. During our spot inspection, we deemed it fit to go to the railway track from where the body was recovered and we found that the said place can be accessed only in a Jeep as it was a remote place, not regularly accessed. We stop to pause and ponder as to why the deceased Gokulraj would have picked a spot to allegedly commit suicide in a godforsaken place not easily accessible when a railway track was readily available in Tiruchengode itself. While assessing evidence there is no rule requiring judges to keep their common sense in cold storage.

141. Thus, the well-orchestrated manner in which the accused persons had executed the gruesome murder of Gokulraj is yet another incriminating circumstance which forms a part of the conspiracy. The accused persons wanted to project it as a suicide whereas, the evidence of the doctors clearly established that the death was caused due to homicide.

142. The conduct of the accused persons and particularly, that of A1 assumes a lot of significance in this case. A1 had absconded for nearly 100 days after the murder took place. In the meantime,he was parallelly busy giving

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interviews and participating in talk shows conducted by a news channel. A1 was somehow trying to create an impression as if he was targeted and that he was innocent. The exuberance that was shown by A1 after the incident has proved to be counter-productive and his unusual conduct must also be taken as another incriminating circumstance forming part of the conspiracy.

143. Section 10 of the Evidence Act imputes or ascribes a level of constructive liability based on the principles of partnership and agency that deems a conspirator liable for:

a) the offence of conspiracy by merely partaking in the common intention with other conspirators and ;

b) for any offence intended by doing some overt act in the execution of the common intention.

For triggering the rule of evidence in Section 10, all that is necessary is that there exists a reasonable ground to believe that two or more persons have conspired to commit an offence. Conspiracies are hatched in secrecy and executed in darkness and in all cases, the only proof that is available is the circumstantial evidence. Common intention can be inferred even from the surrounding circumstances and from the conduct of the parties.

Applying the said principles, we have no doubt in returning a finding that the

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prosecution has proved the conspiracy from the surrounding circumstances and the conduct of the parties which have been explained, supra.

vi. Last seen theory

144. This Court will now deal with the most important circumstance in this case, which is the last seen theory. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the perpetrator of the crime becomes impossible. In cases where there is a long time gap, it becomes difficult in some cases to positively establish the guilt of the accused by using the last seen theory. It is not possible to exactly define how much of time gap will be safe to employ the last seen theory and it will always depend upon the facts and circumstances of each case. The Court must only be careful in ensuring that due to the long-time gap, there is a possibility of other persons also to have come in contact with the deceased and who might be the ultimate cause for the death of the deceased.

145. The last seen theory is taken to be a strong link in the chain of circumstances where the prosecution seeks to prove the case through circumstantial evidence. It must also be borne in mind that in the absence of any

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other links in the chain of circumstances, it will not be possible to convict the accused solely based on the last seen theory. Even while deploying the last seen theory, the said circumstance from which inference of guilt is sought to be drawn, must be cogently and firmly established by the prosecution. Once it is so established by the prosecution, in the absence of a proper explanation from the accused persons on the incriminating circumstance, it can be put against them under Section 106 of the Indian Evidence Act and the same will result as the last connecting link in the chain of circumstances.

146. In the instant case, the deceased was last seen with the accused persons at Ardhanareeshwarar temple. This Court has already dealt with this fact in detail by placing reliance upon the CCTV footages. On 23.06.2015, roughly after 12 noon, the deceased was taken away from the temple. In order to prove the last seen theory, the prosecution had examined P.W-22, P.W-34, P.W-19, P.W-14, P.W-32 and P.W-38. Except P.W-32, all the other witnesses turned hostile. Even insofar P.W-32 is concerned, the evidence of this witness is not strong enough to place reliance and the Trial Court has come a conclusion that reliance cannot be placed upon this witness. The reasoning given by the Trial Court is well founded and hence, this Court concurs with the finding of the Trial Court about the evidence of P.W-32. In view of the same, there is no other

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witness who has spoken about seeing the deceased with the accused persons till 24.06.2015 at around 08.15 a.m. when the dead body was found near the railway track.

147. When this Court discussed about the issue of conspiracy which was one of the circumstances put against the accused persons, this Court took into account certain events like the suicide video and the suicide note and a finding has been rendered to the effect that these evidences were created by the accused persons to project a picture as if the deceased committed suicide. The post-mortem report and the evidence of the doctors proved it otherwise. All these events had taken place after the deceased was taken away by the accused persons from the Ardhanareeshwarar temple. Ultimately, the dead body of the deceased was found in the railway track on 24.06.2015 at around 08.15 a.m. When these incriminating materials were put to the accused persons, there was no explanation from their side as to what happened to the deceased who was seen in their company as per the CCTV footages.

148. As stated supra, the Court must be satisfied that within the time gap between the point of time when the accused and the deceased were last seen and the deceased was found dead, there was no possibility of any other person

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other than the accused to have perpetrated the crime.

149. While dealing with conspiracy and last seen theory which are two strong circumstances that have been put against the accused persons, this Court must bear in mind the scope of Section 8(b) of the SC & ST Act. This provision creates a reverse onus on the accused persons, and it relieves the prosecution from the evidentiary burden from proving the common intention or common object and such burden is placed upon the accused persons to show that they did not share the common intention or common object.

150. This provision was brought in with the object of ensuring that the offences committed under the SC/ST Act against the member of a Scheduled Caste/Scheduled Tribe community must be dealt with sternly and the Legislature thought that it will be impossible to cure the social evil unless such a reverse burden is brought into the Act, failing which, due to the vagaries of proof, many guilty persons will escape from punishment.

151. The introduction of a reverse onus clause is a familiar device by which the Legislature eases the burden of proof from the side of the prosecution and shifts the burden on to the accused to show that he did not possess the

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requisite mental intent to commit the offence. They are usually deployed in statutes dealing with crimes which are difficult to prove in conformity with the traditional standard of proof.

152. The validity of such special rules of evidence was upheld by the Supreme Court in ***A.B. Krishnav.State of Madras***, reported in ***1957 SCR 399***. In that case, the validity of Section 4(2) of the Madras Prohibition Act, 1937, which contained a reverse onus clause was questioned on the ground that it offended Article 14 of the Constitution. The Supreme Court rejected the argument holding that even under the due process clause in the U.S., such clauses were held to be valid.In approaching a question concerning the construction of these clauses, we must, nonetheless, remember the note of caution struck by Mr. Justice Holmes in ***William N. Mc Farland* v.*American Sugar Refining Company*** [241 US 79 at 86-87 : 60 Law Edn 899, 904], when he observed:

> *"As to the presumptions, of course the legislatures may go a good way in raising one or in changing the burden of proof, but there are limits. It is essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.Mobile J. & K.C.R. Co.v.Turnipseed[219 US 35, 43 : 55 LEd 78, 80] ."*

153. In the context of offences against Scheduled Castes and Scheduled

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Tribes, the Hon'ble Supreme Court in ***Patan Jamal Vali v. State of Andhra Pradesh*** reported in ***2021 SCC Online SC 343***, has pointed out that one of the ways in which offences against members of the Scheduled Caste & Scheduled Tribe community falls through the cracks is due to the evidentiary burden that becomes almost impossible to meet in cases of intersectional oppression (for instance a Dalit woman). The reverse onus clause, in the context of offences under the SC & ST Act is found in Section 8 of the said Act. Even prior to the enactment of the SC & ST Act, a reverse onus clause was available in case of prosecutions for offences against the member of the SC & ST communities under the Protection of Civil Rights Act, 1955. Section 12 of the said Act reads as follows:

> *"12.Presumption by Courts in certain cases.—*
>
> *Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste 2 ***, the Court shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchability".*

> The genesis of this clause goes back to the Report of the Joint Committee on the Untouchability (Offences) Bill, 1954. The Untouchability (Offences) Act, 1955 was later re-christened as the Protection of Civil Rights Act, 1955 with effect from 19.11.1976.

154.The Parliamentary Debates on 28th April 1955, leading to the

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enactment of Section 12 of the Protection of Civil Rights Act, 1955 throws a valuable insight into the object and purpose which the clause served. As one learned member pointed out:

> *"We are enacting this legislation to cure a very deep-rooted evil and this is a legislation which will have to come up against many obstacles in the course of its enforcement. Therefore, in such matters, where there may be a doubt as to whether an act has been committed on the ground of untouchability or whether such an act has been committed on any other ground, there will have to be provided a certain presumption in order to make it possible to administer the law. I agree that in the presence of certain circumstances, the stringency of the presumption may be allowed to be relaxed. I would have preferred some such qualification like this: "shall in the absence of circumstances pointing to the contrary" or something of that kind. There must be an initial presumption. The court must draw an initial presumption. Otherwise, it is impossible to cure a social evil and through the vagaries of proof many guilty persons will escape punishment. Even as the provision now stands, I do not say that many people who are not given to the practice of untouchability will suffer very much. There may be borderline cases of hardship and for those cases, I would suggest this kind of a change: 'in the absence of circumstances pointing to the contrary' and so forth."*

155. As a matter of fact, Section 12 polarised the opinion of the House. One learned member Mr.K.S Raghavachari weighed in to oppose the inclusion of Section 12 observing, inter alia, as under:

> *"The next thing that I wish to submit is*

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this. Only when an offence is proved to have been committed, the question of presumption arises. One would generally understand it not as when an act is alleged to have been committed but is 'proved to have been' committed. Otherwise, the alternative will be that whenever it is alleged that an act is committed, there is no need for proof and the man may be sent to jail because of the presumption. Whenever it is proved to have been committed, usually there may be a presumption, but as you have put it, it simply means that whenever an offence is even alleged to have been committed, the presumption is there. It is most absurd. The thing must be clearly stated as to whether it is 'proved to have been committed' or 'alleged to have been committed'. In either case, presumption without proof would lead us to a topsy-turvy situation so far as criminal jurisprudence is concerned. Therefore, I submit that this amendment which I have given will have to be accepted, for adding the words 'proved to have been'. Otherwise, it becomes absurd."

156. In response, the Minister Shri G.B Pant observed:

" 'The wordings are:Where any act constituting an offence under this Act is committed in relation to a member of the Scheduled Caste ....'. The word 'committed' is there. So, it means that the act is committed, and the person concerned is a member of the Scheduled Caste. This presumption shall be made when the offence had been committed. It is necessary for the person who has committed such an act to establish that he has done the act not because the complainant or the person who had suffered from such a deed was a member of the Scheduled Caste but on some other account. In the circumstances, I do not see what objection can people have to this clause."

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The constitutional validity of Section 12 was also challenged and upheld by this Court in ***Shanmughasundaram Pillai v. State,*** *reported in 1983 Cri LJ 115.*

157. It is in this backdrop that Parliament enacted the SC & ST Act in 1989. Section 6 of the SC & ST Act, 1989 is as follows:

> *"6. Application of certain provisions of the Indian Penal Code.—Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.*

158. For the present purpose, this provision must be read in conjunction with Section 8(b) which deals with presumptions as regards vicarious liability qua offences under the Act. Section 8(b) reads as follows:

> *"8. Presumption as to offences.—In a prosecution for an offence under this Chapter, if it is proved that—*
>
> *(a)…….*
>
> *(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object;*
>
> *(c)……..."*

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159. From a close reading of the aforesaid provision, it is evident that for the presumption to apply, the following foundational facts must be cumulatively established :

a) It must be proved that a group of persons committed an offence under Chapter II of the SC & ST Act and ;

b) It must be proved that such an offence was committed as a sequel to any existing dispute regarding land or any other matter.

It is only when the prosecution adduces evidence to prove the aforesaid two conditions that the presumption under Section 8 would come into its aid for the purposes of fastening liability vicariously under Section 34 of the IPC or Section 149 of the IPC. We must expressly clarify that the commission of an offence under the SC & ST Act is not a matter of presumption under Section 8(b). This is precisely why the opening words of Section 8 begin with the expression "*In a prosecution for an offence under this Chapter, if it is proved that ……*". Thus, what Section 8(b) facilitates is the presumption that the accused who committed the offences shared the common intention or common object, as the case may be, qua the offence already proved. In other words, the purpose of Section 8(b) is to tilt the evidentiary burden of proving the existence of a common intention or

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common object for the purpose of fastening vicarious liability on the members of the group.

160. To expatiate the point a little further, it is well settled that Section 34 of the Evidence Act does not enact any new offence and is merely a rule of evidence that enables the Court to fasten vicarious liability on the ground that the accused persons had shared a common intention to commit the offence(s). As the Supreme Court points out in ***Bhaba Nanda Sarma v. State of Assam, (1977) 4 SCC 396*:**

> *"**4.** To attract the application of Section 34 it must be established beyond any shadow of doubt that the criminal act was done by several persons in furtherance of the common intention of all. In other words, the prosecution must prove facts to justify an inference that all the participants of the act had shared a common intention to commit the criminal act which was finally committed by one or more of the participants."*

161. Similarly, under Section 149 of the IPC, once it is shown that a member of an unlawful assembly had done some overt act in furtherance of a common object, the said accused can be successfully prosecuted vicariously under the said provision. This has been explained by the Supreme Court in ***Ranjit Singh v. State of Punjab*** reported in ***(2013) 16 SCC 752***, in the following

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words:

> *"**35.**Baladinv.State of U.P.[AIR 1956 SC 181 : 1956 Cri LJ 345] was one of the early cases in which this Court dealt with Section 149 IPC. This Court held that mere presence in an assembly does not make a person a member of the unlawful assembly, unless it is shown that he had done or omitted to do something which would show that he was a member of the unlawful assembly or unless the case fell under Section 142 IPC. Resultantly, if all the members of a family and other residents of the village assembled at the place of occurrence, all such persons could not be condemned ipso facto as members of the unlawful assembly. The prosecution in all such cases shall have to lead evidence to show that a particular accused had done some overt act to establish that he was a member of the unlawful assembly. This would require the case of each individual to be examined so that mere spectators who had just joined the assembly and who were unaware of its motive may not be branded as members of the unlawful assembly."*

162. Thus, the normal rule both under Section 34 and Section 149 is that evidentiary burden of proving the existence of a common intention or common object rests with the prosecution. Section 8(b) of the SC & ST Act reverses this position and relieves this evidentiary burden from the prosecution and places it on the accused, requiring him to show that he did not share the common intention or common object as regards an offence under the Act. The Legislature was obviously alive to the fact that group offences committed against a member

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of SC & ST community would go unpunished if the ordinary rules of evidence were to hold the field, making it almost impossible to establish the existence of a common intention or common object.

163. The view that we take finds support from the decision of a Division Bench of this Court (P.N Prakash and A.A. Nakkiran, JJ.) in ***Deputy Commissioner of Police v D. Marudhupandiyan***, (R.T 4 of 2021, dated 08.06.2022) wherein it was observed as under:

> *"**152.**Section 8(b) of the SC/ST Actuses the expression "a group of persons". A group could be two or more persons. The word "group" has been used in order to make the presumption applicable both to common intention (Section 34 IPC) and common object (Section 149 IPC) ,Section 8(b) of the SC/ST Actwould apply to offences relating to any "existing land dispute or any other matter". The expression "any other matter" would undoubtedly encompass an "Honour Killing". The object of Section 8(b),ibid., is to relieve the prosecution of its evidentiary*

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burden to prove that each member in the group shared the common intention or had a common object. It reverses theonusand casts it on a member to show that he or she neither shared the common intention nor had the knowledge about the common object of the group. In normal circumstances, in anIPCprosecution, theonusis on the prosecution to show that the accused shared the common intention or had knowledge about the common object of the assembly for convicting him with the aid of Sections 34 or 149IPC, as the case may be. This would be established by proving the overt acts of the accused based on which the Court would draw the necessary inference. Offences under theSC/ST Actare normally perpetrated on the Dalits on account of cultural and deep-rooted prejudice that the non-Dalits harbour against them. So, on the slightest pretext, a whole community of non-Dalits would go about on a rampage burning the houses of Dalits with the refrain, "these

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fellows should be taught a lesson". Therefore, in the wisdom of the Parliament, ,Section 8(b) of the SC/ST Actwas introduced to shift theonuson the accused to show that they neither shared the common intention nor had any knowledge about the common object of the group.

153.*A fortiori, once an offence under Chapter II of theSC/ST Actis proved to have been committed by a group, the presumption under Section 8(b),ibid., would come into play. Presumptions, as was colourfully explained by the American Judge Lamm, J. "are like bats, flitting in the twilightbut disappearing in the sunshine of facts."(See****Mackowik v Kansas City St. James & CBR Co. [(1906) 94 SW 256].*** *The legislature, in its wisdom, was conscious of the fact that in matters involving atrocities on Scheduled Castes and Scheduled Tribes, the evidence would mostly be in the twilight zone and in the absence of a statutory presumption, the perpetrators would escape in the shadow of the fading light."*

164. Finally, to illustrate the operation of Section 8(b) let us take the following example: A gets into a wordy quarrel with B, a Dalit about a plot of land which A wants to buy from B. In a fit of rage, A heads to his house and calls out the menfolk (C,D,E,F and G). K, who worked in the nearby farm overhears A calling out B by his caste and telling C to G that only the death of B would

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avenge his lost honour. Whereupon C to G at the instigation of A, proceed to the house of B, and upon sighting him, beat him to death with wooden logs. K, fearing the worst, rushed to the house of B only to find him dead. He also saw C, F and G leaving the house.

165. In the above example. The prosecution is first required to prove that an offence under the SC & ST Act has been committed by a group. For this purpose, the evidence of K is available for the purposes of showing that an unlawful assembly was formed at the behest of A which proceeded to the house of B. K has spotted the presence of at least 3 members of the assembly after finding the dead body of B. Thus, an offence under Section 3(2)(v) of the SC & ST Act read with Section 149 IPC is clearly made out on the aforesaid facts.

166. In the alternative, they may be tried and convicted under Section 3(2)(v) of the SC & ST Act read with Section 34 of the Indian Penal Code. In either alternative, the prosecution can press in aid the presumption under Section 8(b) since -

a) It is proved that A,C-G, as members of a group, caused the death of B knowing that he was a member of the Dalit community thereby committing an offence under Section 3(2)(v) of the Act.

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b) The offence was committed as a sequel to a wordy spat between A and the deceased B which led to A hatching a plan to do away with B.

Thus, the net of Section 8(b) applies to make all members of the group equally responsible unless the accused satisfies the evidentiary burden by showing that at the time of commission of the offence, he did not share the common intention or common object.

167. In the instant case, the evidentiary burden that was put against the accused persons was not discharged by them. The prosecution has proved the foundational facts through various circumstances put against the accused persons, to bring this case within the net of Section 8(b) of the SC & ST Act. In view of the same, this Court has to necessarily take into consideration the legal presumption and hold that the accused persons had the common intention/common object to commit the offence under the Act and this burden was not even remotely discharged by the accused persons. This provision thus comes to the aid of the prosecution while proving conspiracy and last seen theory as two vital circumstances against the accused persons, as the foundational facts for proof of the commission of the offences have been

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established by the prosecution.

vii. <u>The conduct of Yuvraj- A1 and the statements made by him to the media during the period of abscondence at the time of investigation</u>

168. The conduct of A1 after the incident has really aided the prosecution in substantiating their case. A1, for reasons best known to him, thought that he can play around with the media and by releasing sporadic statements, can get out of the case. A1 was getting in touch with DSP Vishnupriya who initially investigated this case and their recorded conversations were coming out in the open. Till date, the suicide committed by DSP Vishnupriya remains a mystery. A1 was willing to voluntarily give interviews and participate in talk shows about this case when he was absconding. While doing so, A1 unwittingly blurted out certain vital facts which also became a circumstance in the chain of evidence.

169. This Court had the advantage of hearing A1 when he participated in the live telecast on 10.10.2015 that was conducted by P.W-106. This Court also had the advantage of hearing A1 in the interview given by him to P.W-33 on 03.10.2015. It is clear from the statement that A1 was present at

Ardhanareeshwarar temple with other accused persons on 23.06.2015 and he had seen the deceased Gokulraj and P.W-4 at the temple and he had

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interrogated them and had also collected the mobile phone of P.W-4. No one had compelled A1 to give any such interviews or participate in talk shows and it was A1's own making. Fortunately, this has helped the prosecution as one vital link in the chain of circumstances to add strength to the evidentiary value of the CCTV footages and to prove conspiracy and last seen theory against the accused persons.

170. Yet another conduct of A1 that has to be taken into consideration is the abscondence of A1 for nearly 100 days after the incident and during this period, A1 was indulging in such activities to distract and deflect the course of investigation. A1 ultimately surrendered on 11.11.2015 and he ensured that the surrender was made sensational. A1 right through was attempting to divert the course of investigation through media and he was virtually attempting to create an impression in the minds of the general public as if he is a paragon of virtue and that he has been falsely implicated in this case. This is yet another conduct of A1 which furnishes an additional link in the chain of circumstances.

viii. Recovery of incriminating materials

171. In the instant case, the recovery of certain incriminating materials during the course of investigation from the accused persons also becomes an

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additional link in the chain of circumstances. M.O.83, which is a piece of paper which contained the address of Gokulraj, was recovered pursuant to the admissible portion of confession of A2. The handwriting found therein was compared with Ex.P-205 and Ex.P-206 and also the handwriting of A2 collected under Ex.P-208 and the report was given in this regard by P.W-64 under Ex.P-207 and Ex.P-209.

172. Ex.P7 is a piece of paper in which P.W-4 had written her address and mobile number in the police station and this handwriting found in the piece of paper was compared with Ex.P-210, her admitted handwriting, by the expert P.W-64 through whom the report was marked as Ex.P-211.

173. It was pursuant to the admissible portion of the confession of A1 marked as Ex.P-117, M.O.7 and M.O.73 were recovered from A1. This was substantiated by examining P.W-44. That apart, the recovery of the 2GB memory card from A1 which was marked as M.O.47 proved to be a vital piece of evidence to establish the false suicide video of the deceased Gokulraj. The size of the file in the suicide video which was 3:14 MB perfectly matched the subcutaneous memory of the mobile phone marked as M.O.85 (Ex.P-244) which was recovered from A2 after his arrest.

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174. The recovery of the Tata Safari car bearing number: TN 41 S 1564 (M.O.42) and the MM 540 Jeep bearing number TN 33 K 2728 (M.O.74) based on the admissible portion of the confession given by A1 after he was taken on police custody also assumes significance since it is in these vehicles, the deceased was taken from the temple to the railway track. P.W-23 who was examined on the side of the prosecution has stated in his evidence that he is a car dealer and that he knows A1 and the Tata Safari car which belonged to one Ramesh was sold to A1 for a sum of Rs.5,00,000/- on 13.12.2020. A receipt was also given in the name of A1's wife. The ownership was not changed to the name of A1. The delivery note which was marked as Ex.P-47 through P.W-23, the tax invoice marked as Ex.P-50 and the insurance policy which was marked as Ex.P-51, makes it clear that A1 had bought this car and was using this car at the time of the incident.

175. Insofar as the Jeep is concerned, P.W-53 was examined on the side of the prosecution and he has stated that he personally knows A1 and his brother A7 and that he was the owner of the said Jeep. He has further stated that A1 asked for the Jeep on the premise that he wanted to take his submersible motor for repair in that Jeep. The Jeep was handed over the very

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next day. This witness also gave a statement under Section 164 of Cr.PC before the Magistrate (P.W-60) which further corroborates the evidence of P.W-53.

176. P.W-55 has stated in his evidence that the Jeep stood in the name of his Sugandhi and to substantiate the same, Ex.P-155 which is the original R.C book, was marked. It is clear from the evidence of these two witnesses that the Jeep was in the possession of A1 at about 04.00 p.m., on the date of the incident and it was handed over the next day at about 07.00 a.m.

177. It is only from this Jeep that the driving license of A1, the car key, data card, insurance policy paper and a number plate sticker bearing number TN 30 AX 6169 (MO 67 to M.O.71) were recovered in the presence of P.W-44. Apart from that, knife (M.O.72) and the photo of the deceased Gokulraj (M.O.73) were recovered. That apart, based on the admissible part of confession of A1, M.O.47, M.O.76 to M.O.78, M.O.80 and M.O.81 were recovered in the presence of P.W-44. These were vital recoveries further incriminating A1 in this case.

178. The recovery of the above incriminating evidence have been fully established and this furnishes yet another vital additional link in the chain of circumstances.

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ix. <u>The scientific evidence/electronic evidence made as the fulcrum to prove the case</u>

179. In the instant case, in the absence of electronic evidence, the case of the prosecution would have surely been on a weak wicket. This is more so since many crucial witnesses have become hostile and hence, the Court has to necessarily focus on electronic evidence and the expert evidence.

180. In terms of electronic evidence, the list of evidence and the witnesses who spoke about it are hereunder:

- CCTV footage
  i) Ex.P297 (M.O.36)- hard disk
  ii) M.O.37- Sony DVR
  iii) M.O.38- Adapter
  iv) M.O.39 – Mouse
  v) Evidence of P.W-79 (FSL) and reports marked as Exs.P-238, P-240, P-244, P-246, P-248, P-249, P-251 and P-253.
  vi) Evidence of P.W-93 (FSL - Anthropology) and Exs.P-312 to P-327 and report marked as Ex.P-328.

- Conversation between P.W-3 and P.W-4
  i) M.O.41- Mobile phone of PW-26
  ii) M.O.94 – Recording in the CD form
  iii) Evidence of P.W-79 (FSL) – Report marked as Ex.P-253

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- Live telecast of the Nerpadapesu program in which A1 participated in Puthiya Thalaimurai channel – P.W-106 through whom Ex.P-549 CD was marked along with Ex.P-550 Section 65-B certificate. Ex.C9, CD marked for the very same purpose through C.W-2.

- Suicide video of the deceased – 2 GB memory card marked as M.O.47 and the report of P.W-79 marked as Ex.P-246. The report of P.W-52 (FSL) marked as Ex.P-152 and Ex.P-304 (M.O.89) which is the CD containing the suicide speech marked through P.W-93 who ultimately submitted his report marked as Ex.P-328.

- Call Detail Records (CDR)

i) CDR between P.W-4 and the deceased Gokulraj- Ex.P-199 and Ex.P-179 marked through P.W-62. Ex.P-504 and Ex.P-505 were also marked in this regard through P.W-102.

ii) CDR between P.W-1 and A2 (who was in possession of the mobile phone of the deceased)- Ex.P-506 was marked through P.W-102.

iii) CDR between A1 and P.W-99 – Ex.P-389 marked through P.W-101.

iv) CDR between P.W-53 and A1 – Ex.P-524 marked through P.W-102.

v) CDR between P.W-4 and A1 - Ex.P260 marked through P.W-82.

- Interview given by A1 to PuthiyaThalaimurai News channel –

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M.O.46 Sony DVD marked through P.W-33 and Ex.C.7 and Ex.C.8 marked through C.W-2.

- In terms of handwriting expert evidence, the list of evidence and the witnesses who spoke about it are hereunder:

i) Suicide note marked as Ex.P-36 and compared with the handwriting of the deceased. Comparison report marked as Ex.P-207 marked through P.W-64.

ii) Handwriting of P.W-4 – compared with Ex.P-7 in which P.W-4 had written her address and mobile number in the police station and comparison report marked as Ex.P-211 marked through P.W-64.

iii) Handwriting of A2 found in Ex.P-83 and comparison report marked as Ex.P-209 through P.W-64.

181. In so far as electronic records are concerned, the Court must now examine the applicable law under Section 65-A and B of the Evidence Act. taxonomy of Section 65-B is traceable to the Civil Evidence Act,1968 of the United Kingdom. It is also found in the provisions of the Police and Criminal Evidence Act,1984 of the United Kingdom. Clauses (2) to (6) of Section 5 of the Civil Evidence Act,1968 are in parimateria with Clauses (2) to (6) of Section 65-B of the Indian Evidence Act. It is further interesting to note that by 1993, the

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United Kingdom realized that it's law has become outdated and it was decided that the authenticity of the electronic evidence could be addressed by concentrating upon the weight to be attached to such evidence rather than formulating complex and inflexible conditions as to its admissibility. Section 5 of the Civil Evidence Act was eventually repealed by the Civil Evidence Act, 1995. In criminal cases, there was a similar provision under Section 69 of the Police and Criminal Evidence Act, 1984. Section 69 (1)(2) of the Act dealt with the requirements of admissibility which provided for a certificate under the relevant rule and this is in parimateria with Section 65-B(4) of the Indian Evidence Act. This provision was also found to be obsolete and it was repealed by the Criminal Justice Act, 1999. Thus, the present position in the United Kingdom is that the common law presumption that in the absence of the evidence to the contrary, the Courts will presume that mechanical instruments were in order at the material time, operates with full force.

182. It is rather unfortunate that the provisions found to be obsolete by the United Kingdom in 1995 were found to be readily acceptable by the Indian Legislature in the year 1999. By virtue of the same, certification requirements that were conceived by the United Kingdom in the year 1960, is now made applicable to modern computers, in the year 2000 by India. There could be no

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better instance of fitting a square peg into a round hole.

183. One more important factor to be taken notice of is that even when Section 5 of the Civil Evidence Act, 1968 and Section 69 of the Police and Criminal Evidence Act,1984 remained in the statute book, English Courts were permitting oral evidence to establish the reliability of the computer process from which the record was produced. Useful reference can be made to the judgment of the House of Lords in ***Regina v. Shepherd (1993) 2 AC 380***. Even this was not noticed by the Legislature, and the Legislature pinned on the requirement of a certification. Sections 65-A and 65-B of the Indian Evidence Act, which is now considered to be a complete code on admissibility of electronic evidence, has already been found to be obsolete by the country from which we imported it and we have been dabbling with these provisions for the last 23 years.

184. Section 3 of the Evidence Act defines "Evidence" to mean all documents including electronic records produced for the inspection of the Court and labels it as documentary evidence. Thereby, electronic evidence has been brought on par with documentary evidence. That is the main reason as to why the concepts of primary evidence and secondary evidence has been imported to electronic evidence also. The concept of electronic evidence is of recent origin

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that took place in the year 2000. Electronic evidence should have been brought in as a separate chapter considering the magnitude and the growing importance of the electronic evidence. Countries like Canada and South Africa have enacted separate laws for electronic evidence. However, in India, electronic evidence was inserted into Chapter V which deals with documentary evidence. In the considered view of this Court, this has really opened the pandora's box for all the confusions with which the Courts are dabbling these days.

185. The concept of original (primary) strictly belongs to paper documents. The data that is fed into the computer and its output are in binary format which is incomprehensible for a lay person. It is only after the data processing and conversion into a readable format, the computer makes the input and output understandable for the human eyes. Hence, the data that is ultimately understood by the user is the secondary rendition of the original and it cannot be called as primary evidence.

186. Hopefully, the Legislature applies its mind on the observations made by this Court supra and comes up with a separate chapter on electronic evidence in the Evidence Act by taking note of developments that have taken place in

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other countries. It is high time that the Legislature has a complete re-look and comes up with an appropriate legislation with respect to electronic evidence abreast with the prevailing scenario and make the procedure simpler for letting in electronic evidence during trial. We find that a similar sentiment was echoed by Justice V. Ramasubramanian in his concurring opinion in ***Arjun Panditrao Khotkar (2020 7 SCC 1),*** referred supra, where he laments thus:

> *"It will be clear from the above discussion that the major jurisdictions of the world have come to terms with the change of times and the development of technology and fine-tuned their legislations. Therefore, it is the need of the hour that there is a relook at Section 65B of the Indian Evidence Act, introduced 20 years ago, by Act 21 of 2000, and which has created a huge judicial turmoil, with the law swinging from one extreme to the other in the past 15 years from Navjot Sandhu to Anvar P.V. to Tomaso Bruno to Sonu to Shafhi Mohammed".*

In mature democracies the legislative response to legislation that is found to be unworkable by the Courts is swift and efficient. After all, if the provisions of a statute are found to be unworkable by the Courts, it should seem imperative that the legislative branch should step in to resolve the impasse. The Courts power to innovate is limited given the fact that judicial legislation is a no-go zone. To use

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an oft quoted example the Court can iron out the creases but it cannot alter the fabric even if the complaint is that its fibres are old and unworkable. In such cases, the legislature's duty to make appropriate changes flows from the principle of separation of powers. Prompt legislative response to such problems provide the impetus for a healthy dialogue between the Courts and the legislature which, in turn, strengthens the rule of law. The Courts cannot be overly burdened with making unworkable legislation workable. As Chief Justice Mclachlinpointed out in Richard Sauve v The Attorney General for Canada.

"*The healthy and important promotion of a dialogue between the legislatureand the courts should not be debased to a rule of 'if at first you don't succeed, try, try again'.*"

187. The electronic records have been defined under Section 2(t) of the Information Technology Act, 2000 as follows:

> ***"(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;"***

Even though the above definition appears to be short, it is gargantuan in terms of its inclusions and particularly the term data. Data is separately defined in Section 2(O) of the Information Technology Act, 2000 as follows:

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> ***"(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;"***

188. Data is an exhaustive definition, and it is at the core of any electronic evidence. Computer, computer network and computer systems are also separately defined under section 2(i), 2(j) and 2(l) of the Information Technology Act, 2000. It is in view of these definitions every other electronic device/system can be brought within its scope.

189. Section 65-A of the Evidence Act provides for a special procedure for proving the contents of electronic records. In furtherance thereof, Section 65-B provides for the procedure. These sections have been a source of great controversy because of its placement, language and interpretation. The controversy started in ***Navjot Sandhu*** case in the year in 2005 and it ultimately culminated in 2020 in ***Arjun PanditraoKotkar*** case. The law has certainly swung from one end to the other, and the fate of several lakhs of cases and the litigants

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have swung along with the judicial pendulum. Will the legislature redeem the law on electronic evidence? Only time will tell.

190. In ***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru*** reported in **(2005) 11 SCC 600**, the Hon'ble Supreme Court held that the call records that were stored in the servers and where printouts are taken from the computer/server by mechanical process and it is spoken to by a responsible officer, such secondary evidence is admissible in view of Section 65 of the Evidence Act and Section 65-B is not a bar due to non-compliance of the requirements contained therein. This proposition of met its waterloo nine years later in ***Anvar P.V. v. P.K.Basheer and Others*** reported in ***(2014) 10 SCC 473***. A three member Bench in ***Anvar*** overruled the decision in ***Navjot Sandhu*** case and it was held that secondary evidence by way of electronic record is wholly governed by Sections 65-A and 65-B of the Evidence Act and that recourse to Section 65 was impermissible. Consequently, CD, DVD, chip etc. are required to be accompanied by a requisite certificate without which the evidence becomes inadmissible.

191. Another three Judge Bench struck a discordant note in ***Tomaso Bruno and Another v. State of Uttar Pradesh*** reported in ***(2015) 7 SCC 178*** and it was held that the secondary evidence of electronic records can also be led

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through Section 65 of the Evidence Act.

192. To mitigate the after effects of ***Anvar*** case and its consequences, the Supreme Court in ***Sonu v. State of Haryana*** reported in ***(2017) 8 SCC 570,*** that the certificate under Section 65-B of the Evidence Act only pertains to the mode or method of proof and was procedural in nature and hence, if no objection was raised at the time of marking the electronic record, such objections cannot be raised for the first time in appeal. Thus, this judgment came up with a proposition that where the electronic evidence is allowed to come on record without any objection, it will then not be open to any party to dispute its admissibility at the stage of appeal. Hence, failure to produce a certificate under Section 65-B would be deemed to be waived on the principle that any objection as to the mode and method of proof ought to be raised at the stage of marking and not thereafter.

193. Later in ***Shafhi Mohamad v. State of Himachal Pradesh*** reported in ***(2018) 2 SCC 801*** a two-Judge Bench held that Sections 65-A and 65-B of the Indian Evidence Act cannot be held to be a complete code and the requirement of a certificate can be relaxed by the Court wherever the interest of justice so justifies. This judgment virtually watered down the dictum in ***Anvar*** case.

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194. However, in ***Arjun Panditrao Khotkar,*** a three-judge Bench overruled ***Shafhi Mohamed*** and observed as follows:

> "***73.1.****Anvar P.V.[Anvar P.V.v.P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment inTomaso Bruno[Tomaso Brunov.State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] , being per incuriam, does not lay down the law correctly. Also, the judgment inShafhi Mohammad[Shafhi Mohammadv.State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] and the judgment dated 3-4-2018 reported asShafhiMohd.v.State of H.P.[ShafhiMohd.v.State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704] , do not lay down the law correctly and are therefore overruled.*
>
> ***73.2.****The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 inAnvar P.V.[Anvar P.V.v.P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] which reads as "…if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act…" is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,…". With this clarification, the law stated in para 24*

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ofAnvar P.V.[Anvar P.V.v.P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does not need to be revisited.

73.3.*The general directions issued in para 64 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67-C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers."*

195. Justice V. Ramasubramanian who wrote the concurring opinion in ***Arjun Panditrao***, went on to observe:

"***76.*** *Documentary evidence, in contrast to oral evidence, is required to pass through certain checkposts, such as (i) admissibility, (ii) relevancy and (iii) proof, before it is allowed entry into the sanctum. Many times, it is difficult to identify which of these checkposts is required to be passed first, which to be passed next and which to be passed later. Sometimes, at least in practice, the sequence in which evidence has to go through these three checkposts, changes. Generally and theoretically, admissibility depends on relevancy. Under Section 136 of the Evidence Act, relevancy must be established before admissibility can be dealt with. Therefore if we go by Section 136, a party should first show relevancy, making it the first checkpost and admissibility the second one. But some documents, such as those indicated in Section 68 of the Evidence Act, which pass the first checkpost of relevancy and the second check post of admissibility may be of no value unless the attesting witness is examined. Proof of execution of such documents, in a manner established by law, thus constitutes the third check post. Here again, proof of execution stands on a different footing than proof of contents.*

77.*It must also be noted that whatever is relevant may not always be admissible, if the law imposes certain conditions. For instance, a document, whose contents are relevant, may not be*

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admissible, if it is a document requiring stamping and registration, but had not been duly stamped and registered. In other words, if admissibility is the cart, relevancy is the horse, under Section 136. But certain provisions of law place the cart before the horse and Section 65-B appears to be one of them.

78.*Section 136 which confers a discretion upon the Judge to decide as to the admissibility of evidence reads as follows:*

*"**136.Judge to decide as to admissibility of evidence**.— When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.*

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned, unless the party undertakes to give proof of such fact, and the court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact."

79.*There are three parts to Section 136. The first part deals with the discretion of the Judge to admit the evidence, if he thinks that the fact sought to be proved is relevant. The second part of Section 136 states that if the fact proposed to be proved is one, of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned. But this rule is subject to a small concession, namely, that if the party undertakes to produce proof of the last mentioned fact later and the court is satisfied about such undertaking, the court may proceed to admit evidence of the first mentioned fact. The third part of Section 136 deals with the relevancy of one alleged fact, which depends upon another alleged fact being first proved. The third part of Section 136 has no relevance for our present purpose.*

80.*Illustration (b) under Section 136 provides an easy*

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example of the second part of Section 136. Illustration (b) reads as follows:

"(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced."

81.*What is laid down in Section 65-B as a precondition for the admission of an electronic record, resembles what is provided in the second part of Section 136. For example, if a fact is sought to be proved through the contents of an electronic record (or information contained in an electronic record), the Judge is first required to see if it is relevant, if the first part of Section 136 is taken to be applicable.*

82.*But Section 65-B makes the admissibility of the information contained in the electronic record subject to certain conditions, including certification. The certification is for the purpose of proving that the information which constitutes the computer output was produced by a computer which was used regularly to store or process information and that the information so derived was regularly fed into the computer in the ordinary course of the said activities.*

83.*In other words, if we go by the requirements of Section 136, the computer output becomes admissible if the fact sought to be proved is relevant. But such a fact is admissible only upon proof of some other fact, namely, that it was extracted from a computer used regularly, etc. In simple terms,what is contained in the computer output can be equated to the first mentioned fact and the requirement of a certification can be equated to the last mentioned fact, referred to in the second part of Section 136 read with Illustration (b) thereunder.*

84.*But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B,for the purpose of proving the contents of electronic records, but Section 65-B speaks entirely about the preconditions*

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for admissibility. As a result, Section 65-B places admissibility as the first or the outermost checkpost, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.

85.*The placement by Section 65-B, of admissibility as the first or the border check post, coupled with the fact that a number of "computer systems" [as defined in Section 2(l) of the Information Technology Act, 2000] owned by different individuals, may get involved in the production of an electronic record, with the "originator" [as defined in Section 2(za) of the Information Technology Act, 2000] being different from the recipients or the sharers, has created lot of acrimony behind Section 65-B, which is evident from the judicial opinion swinging like a pendulum.*

120.*It will be clear from the above discussion that the major jurisdictions of the world have come to terms with the change of times and the development of technology and fine-tuned their legislations. Therefore, it is the need of the hour that there is a relook at Section 65-B of the Evidence Act, introduced 20 years ago, by Act 21 of 2000, and which has created a huge judicial turmoil, with the law swinging from one extreme to the other in the past 15 years from Navjot Sandhu [State (NCT of Delhi) v.Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] to Anvar P.V.[Anvar P.V.v.P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] toTomaso Bruno[Tomaso Brunov.State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] to Sonu[Sonuv.State of Haryana, (2017) 8 SCC 570 : (2017) 3 SCC (Cri) 663] toShafhi Mohammad [Shafhi Mohammad v.State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] .*

196. The above judgment was followed by the Apex Court in ***Ravinder Singh alias Kaku v. State of Punjab*** reported in ***(2022) 7 SCC 581*** and it was held as follows:

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"***21.****Lastly, this appeal also raised an important substantive question of law that whether the call records produced by the prosecution would be admissible under Sections 65-A and 65-B of the Evidence Act, given the fact that the requirement of certification of electronic evidence has not been complied with as contemplated under the Act. The uncertainty of whether Anvar P.V.v.P.K. Basheer [Anvar P.V.v.P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] occupies the filed in this area of law or whether Shafhi Mohammad v. State of H.P. [Shafhi Mohammad v.State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] lays down the correct law in this regard has now been conclusively settled by this Court by a judgment dated 14-7-2020 in Arjun Panditrao Khotkar v.Kailash KushanraoGorantyal [Arjun Panditrao Khotkarv.Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2 SCC (L&S) 587] wherein the Court has held that : (Arjun PanditraoKhotkar [Arjun Panditrao Khotkar v. Kailash Kushan rao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2 SCC (L&S) 587] , SCC pp. 56 & 62, paras 61 & 73).*

"*61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held inAnvar P.V.[Anvar P.V.v.P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly "clarified" inShafhi Mohammad[Shafhi Mohammadv.State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] .Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle inTaylorv.Taylor[Taylorv.Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.*

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73.1.Anvar P.V.[Anvar P.V.v.P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , as clarified by us herein above, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment inTomaso Bruno[Tomaso Brunov.State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] , being per incuriam, does not lay down the law correctly. Also, the judgment inShafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] and the judgment dated 3-4-2018 reported as Shafhi Mohammad v.State of H.P. [Shafhi Mohammad v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704] , do not lay down the law correctly and are therefore overruled.

73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4)."

(emphasis supplied)

22.*In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law."*

Nevertheless, it is important to notice that the Supreme Court, despite having

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taken note of ***Sonu v. State of Haryana*** reported in **(2017) 8 SCC 570,** has not overruled the same in ***Arjun Panditrao's*** case**.**

197. In view of the above, the present legal position on electronic records can be summed up thus:

a) The certificate under Section 65-B(4) of the Indian Evidence Act is a condition precedent to the admissibility of electronic records.

b) Oral evidence cannot be a substitute for a certificate under Section 65-B(4) of the Evidence Act.

c) As long as the trial is not over, it is always left open to the Trial Court to direct the certificate to be produced at any stage.

d) Where the requisite certificate has been called for or requested from the person or the authority concerned and they refuse to give the certificate or do not respond, it is left open to the party to apply to the Court for the production of the certificate by taking recourse to Section 91 and/or Section 311 of Cr.P.C. The Court itself has the

power to call for such a certificate in exercise of its jurisdiction under Section 165 of the Evidence Act.

e) Where the certificate is not produced even after an order is

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passed by the Court or the production of such a certificate becomes impossible, it is left open to the Court to dispense with the certificate.

f) Where the primary evidence (original document like computer, mobile phone, hard disk etc.) is produced, the certificate under Section 65-B (4) is unnecessary and

g) The dictum in ***Sonu*** case, even after it is specifically referred in ***Arjun Panditrao Khotkar*** case, was not disturbed and hence, in cases where the electronic evidence is allowed to come on record without any objection, it will then not be open to any party to dispute its admissibility at the Appellate stage. This will also equally apply to a Section 65-B certificate marked without objection and its form and non-fulfilment of some of the requirements under Section 65-B(2)(b) and/or Section 65-B(4)(b), cannot be raised for the first time before the Appellate Court.

198. The fulcrum of the case of the prosecution is the CCTV footage-M.O.36 (Ex. P297). It is only based on this evidence that the prosecution is seeking to establish both the last seen theory as well as the conspiracy hatched by the accused persons to do away with the deceased Gokulraj. Without any

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doubt, M.O.36 (Ex.P297) is a document as defined under Section 3 of the Indian Evidence Act and falls within the category of electronic evidence.

199. Insofar as the CCTV footage is concerned, the images captured by CCTV cameras is sent to the DVR, which records the video in a digital format and it gets stored in the hard disk. What gets stored in the hard disk can be played in a monitor only through a DVR. In other words, without a DVR, the hard disk cannot be independently operated. For this to happen, the DVR must contain the software which can read the hard disk. The hard disk in which the information is stored, is considered to be a primary evidence and if that hard disk is directly used to play the CCTV footage in a Court, there is no requirement to produce Section 65-B certificate. However, if any copy/extraction is made from the hard disk and it is stored in a CD or a DVD or a pen drive or snapshots are taken from the hard disk, such electronic evidence has to be necessarily accompanied with Section 65-B certificate since it falls under the category of secondary evidence.

200. Since CCTV footage plays a major role in this case, it is necessary to understand the basics of CCTV footage. There are broadly two types of CCTVs viz. Analogue and Digital. Analogue CCTV camera records the images to a digital recorder which converts the video to a digital format and if one wants to view the

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video, the DVR has to be connected to a monitor.

201. In the case of a digital CCTV, the cameras record in a digital format and no conversion process is required. The recorded digital data is sent to a dedicated network video recorder and it can be accessed remotely through dedicated software or mobile application.

202. DVR stands for Digital Video Recorder. There are two types of DVRs. The embedded DVR is a standalone piece of equipment that accepts analogue CCTV camera inputs and stores it on a local hard disk drive. The other type is a PC based DVR, which is integrated into a surveillance station with hardware compression add-in card or software compression on the PC. It is considered that the embedded DVR is difficult to access and hack, compared to the PC based DVR.

203. In a criminal trial, evidence in the form of CCTV footage can be significantly crucial as in the present case. CCTV footage not only help to establish the presence of the accused at the place of occurrence, but it also is taken on par with ocular evidence which carries great evidentiary value. In view

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of the same, the provisions of Section 65-B must be followed to adduce CCTV evidence failing which, it will lead to an acquittal inspite of the availability of a strong evidence.

204. In the book "Electronic Evidence in the Court room", authored by Mr. Yuvraj P. Narvankar, a checklist for the acquisition of the CCTV footage has been suggested and this Court feels that the same can be taken into account and which can be followed in cases involving CCTV footages and the same is extracted hereunder:

"*Checklist for the acquisition of CCTV footage:*

The following points should be remembered while acquiring CCTV footage:

> *i) Ensuring that all the video cameras covering the "spot of incidence" are identified.*
>
> *ii) After identification, in a private case, adequate court or police assistance may be taken for approaching the concerned owner of the system. It can also be done by talking to the owner and requesting him for access to the footage. In the event, the owner seems hostile or if it is apprehended that the evidence can be destroyed, immediately a letter for the preservation of the said evidence can be addressed to the concerned owner. Though such requisition by the private party is not binding on the owner, destruction of such evidence despite clear intimation can render the*

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custodian of the record, liable under section 204 of Indian Penal Code, 1860 (IPC):

Section 204. Destruction of 1(document or electronic record] to prevent its production as evidence-Whoever secretes or destroys any 1[document or electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such 1[document or electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

iii) In the case of investigation by police authorities, such evidence is accessible as of right and as a matter of procedure.

iv) It is necessary to obtain the login credentials or passwords if there are any, from the custodian of the system.

v) Very meticulous and timely notes should be maintained elaborating the course of action taken and providing the audit trail.

vi) The make and model of the CCTV system, and the number of cameras and other technical details should be carefully recorded.

vii) The first responder can verify if the system does have the video footage. It is also a good strategy to play it and shoot the same with one's cell phone or camera since, in case of any unexpected unforeseen contingency if deletion of the original.

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viii)It is very important to verify from the owner, the exact system specifications, the memory capacity of the storage device. If the same is shorter, there is a possibility of overwriting. In such a scenario, the future recording must be immediately stopped otherwise the same can lead to overwriting leading to loss of relevant footage. Some systems do come with a feature of write-protecting.

ix) The system and its wiring system must be photographed for re-setting and re- connection of the system in the forensic lab. Such photographs do help in restoring the system at the lab.

x) The most crucial factor is to perform the "Time check". It is done by comparing the time displayed by the CCTV system with that of real-time. If there is anyone variance between the system time and real-time, the same should be immediately recorded and be brought to the notice of the forensic analysts. This will also assist in the acquisition and retrieval of the relevant time-laps.

xi) During extraction, it is advisable to extract the relevant footage in its native format for maintaining good image quality. In certain cases, such formats are the proprietary formats of the manufacturers.

xii) Converting the footage into standard video formats may require compression and may affect the footage clarity and may also change the metadata. Therefore, such a decision should be taken with due care and caution.

xiii) In case of any decision, the logic of which can be questioned, it is advisable to record the reasons for such decision in the case diary

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or audit trail or chain of custody form.

xiv) All the cameras and their peripherals should be collected without exception.

xv) The same should be duly labelled and exhibited and entered into the records.

xvi) Most importantly, the owner and in charge of the system should be required to give a duly prepared 65B certificate since he/she the only authority to give the same being in charge of system."

205. The object of a CCTV footage is mainly for identification of the accused persons by comparing the questioned images with the photograph of the accused persons. Yet another important object of a CCTV footage is that it is a visual narrative of the contents. CCTV is considered to be the best evidence which captures whatever comes within the purview of the CCTV camera. Hence, if there is an authentication of such a CCTV footage through forensic evidence, it becomes an unimpeachable piece of evidence.

206. To ensure that what is collected as an evidence in the source is exactly reflected or produced at the time of marking the electronic evidence before the Court, particularly when it comes to CCTV footages, a standard operating procedure must be followed. Such a practice will guarantee that

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nothing gets altered/deleted/added by the time the evidence is tendered before the Court. Hence, the concept of hash value is insisted at four stages and this value must be the same on all those four stages to ensure authenticity. When the CCTV footage gets stored in the hard disk, that is the first stage where the hash value must be noted down when it is received by the analyst from the Court on requisition made by the prosecution. Thereafter, the analyst creates a copy/mirror image of what is contained in the hard disk and this must also have the same hash value. As the next step, the forensic examination starts and ultimately, it is concluded and a report is given by the forensic analyst. In all those four stages, the hash value must be the same.

207. For convenience, after the examination is completed by the forensic analyst, the footage can be downloaded to a DVD/CD and the same hash value will be reflected without any change. Since the extraction from the hard disk to the DVD/CD makes such DVD/CD as a secondary evidence, it goes without saying that such a DVD/CD must be accompanied with Section 65-B certificate. Copies taken and given to the accused persons under Section 207 of CrPC. regarding the CCTV footages should also be accompanied with Section 65-B certificate.

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208. We deemed it fit to record this procedure so that such standard practice is followed in cases involving electronic evidence and particularly where the important evidence on the side of the prosecution hinges upon a CCTV footage. We are hopeful that the pains taken by us to elaborately deal with the procedure will be taken note of and will be followed in the future investigations involving electronic evidence and a standard operating procedure with checklist must be prepared and the investigation officers must be trained to ensure its due compliance.

209. Any hard disk has a particular storage space. The data that goes into a hard disk fills up a particular space in the hard disk. There will always be a space in the hard disk which is not filled up. In other words, this space is available but not used. This is technically called as the slack space. In other words, the space that is occupied by the data can be considered as an active memory and the space which remains unutilised is called as the subcutaneous memory. This subcutaneous memory will include the space which is lying underneath the active memory as unallocated or slack space.

210. It is very important to know the significance of a slack space/subcutaneous memory since the deleted data can be recovered from the

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slack space/subcutaneous memory.

211. It will also be relevant to take note of the judgment of the Apex Court in ***P. Gopalakrishnan alias Dileep v. State of Kerala and Another*** reported in ***(2020) 9 SCC 161***. The Apex Court was dealing with furnishing of copies of the documents to the accused persons under Section 207 Cr.P.C., which also includes electronic records. In this case, it involved a memory card containing video and audio footage/clipping. To appreciate the direction issued by the Apex Court in this judgment, it will be appropriate to understand the term subcutaneous memory. The word data as defined under Section 2(o) of the Information Technology Act is an exhaustive definition. It not only includes the active memory in a hard disk, but also a subcutaneous memory. Hard disk is an electronic device used for storing information. Once something is written upon a blank hard disk, it is subject to changes and to that extent, it becomes an electronic record. Even if whatever has been written is completely effaced or something is re-written over it, the information which was first written gets stored in a subcutaneous memory of the hard disk and it can be retrieved by using software designed for that purpose. Hence, the hard disk not only includes the recorded memory but also has within its fold the slack space which is called as the subcutaneous memory.

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212. The question that arose before the Apex Court in the above case was as to whether the contents of the memory card which is treated as a document, must contain only the relevant portions relied upon by the prosecution or the entire contents of the memory card must be given to the accused. While answering this question, it was held as follows:

> "***23.*** *The next seminal question is : whether the contents of the memory card/pen-drive submitted to the court along with the police report can be treated as "document" as such. Indubitably, if the contents of the memory card/pen-drive are not to be treated as "document", the question of furnishing the same to the accused by virtue of Section 207 read with Section 173 of the 1973 Code would not arise. We say so because it is nobody's case before us that the contents of the memory card/pen-drive be treated as a "statement" ascribable to Section 173(5)(b) of the 1973 Code. Notably, the command under Section 207 is to furnish "statements" or "documents", as the case may be, to the accused as submitted by the investigating officer along with the police report, where the prosecution proposes to rely upon the same against the accused.*
>
> ***37.*** *Considering the aforementioned Reports, it can be concluded that the contents of the memory card would be a "matter" and the memory card itself would be a "substance" and hence, the contents of the memory card would be a "document".*

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38.*It is crystal clear that all documents including "electronic record" produced for the inspection of the court along with the police report and which prosecution proposes to use against the accused must be furnished to the accused as per the mandate of Section 207 of the 1973 Code. The concomitant is that the contents of the memory card/pen-drive must be furnished to the accused, which can be done in the form of cloned copy of the memory card/pen-drive. It is cardinal that a person tried for such a serious offence should be furnished with all the material and evidence in advance, on which the prosecution proposes to rely against him during the trial. Any other view would not only impinge upon the statutory mandate contained in the 1973 Code, but also the right of an accused to a fair trial enshrined in Article 21 of the Constitution of India.*

39.*We do not wish to dilate further nor should we be understood to have examined the question of relevancy of the contents of the memory card/pen-drive or for that matter the proof and admissibility thereof. The only question that we have examined in this appeal is : whether the contents of the memory card/pen-drive referred to in the charge-sheet or the police report submitted to Magistrate under Section 173 of the 1973 Code, need to be furnished to the accused if the prosecution intends to rely on the same by virtue of Section 207 of the 1973 Code?*

40.*Reverting to the preliminary objection taken by the respondent for dismissing the appeal at the threshold because of the disclosure of identity of the victim in the memo of the special*

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leave petition forming the subject-matter of the present appeal, we find that the explanation offered by the appellant is plausible inasmuch as the prosecution itself had done so by naming the victim in the first information report/crime case, the statement of the victim under Section 161, as well as under Section 164 of the 1973 Code, and in the charge-sheet/police report filed before the Magistrate. Even the objection regarding incorrect factual narration about the appellant having himself viewed the contents of the memory card/pen-drive does not take the matter any further, once we recognise the right of the accused to get the cloned copies of the contents of the memory card/pen-drive as being mandated by Section 207 of the 1973 Code and more so, because of the right of the accused to a fair trial enshrined in Article 21 of the Constitution of India."

213. It is clear from the above that all electronic records relied upon by the prosecution must be furnished to the accused as per the mandate under Section 207 of Cr.PC. and the contents of the memory card must be furnished in the form of cloned copy of the memory card. This is to ensure that the accused is able to get all the particulars to defend himself effectively in a criminal trial involving a serious offence. If the Court is of the view that the accused person may misuse the cloned copy, sufficient safeguards can be made by the Court as was done by the Apex Court in the above judgment.

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214. We thought it fit to exhaustively deal with electronic evidence since this case gives an opportunity for the Court to go deeper into the significance of electronic evidence and the manner in which it is required to be proved. Having taken note of the law on the issue, this Court will now take into consideration the evidence available on record.

215. Admittedly, the observation mahazar and the sketch that was prepared by the DSP, Tiruchengode does not mention about the availability of CCTV cameras in the temple. Unfortunately, the DSP who investigated the case committed suicide even during the course of investigation, on 18.09.2015 and thereafter, the investigation was taken up by CBCID. In view of the same, there was no occasion for the Court to get a clarification from the Investigation Officer in this regard. P.W-21 who issues tickets in Tiruchengode Ardhanareeshwarar Temple specifically talks about the availability of CCTV cameras in the temple. Even the Assistant Commissioner/ Executive Officer of the Temple who was examined as P.W-90 specifically talks about the availability of CCTV cameras in the Temple. There is no ground to disbelieve the evidence of these two witnesses with respect to the availability of CCTV cameras in the Temple. The non-mentioning of the CCTV cameras in the observation mahazar and the sketch

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can only be considered to be slackness on the part of Investigation Officer while preparing the observation mahazar and the sketch. When the investigation was taken over by CBCID and it was investigated by P.W-102, he has also thought it fit to adopt the rough sketch prepared by DSP Vishnupriya.

216. P.W-21 in his evidence with regard to the location of the CCTV cameras states as follows:

> திருச்செங்கோடு அர்த்தனாரிஸ்வரர் கோவிலில் CCTV கேமாராக்கள் 8 இடங்களில் உள்ளது. மேற்கு கோபுர வாயிலை பார்த்தவாறு ஒரு CCTV கேமராவும், மற்றொரு CCTV கேமரா செங்கோட்டுவேலர் சன்னதியின் முன் மண்டபத்தில் உள்ளது. செங்கோட்டுவேலர் சன்னதிக்குள் ஒரு ஊஊகூஏ கேமரா உள்ளது. டிக்கெட் விற்கும் இடத்தை பார்க்குமாறு ஒரு ஊஊகூஏ கேமரா உள்ளது. சிறப்பு தரிசன வழியை பார்த்து ஒரு ஊஊகூஏ கேமராவும், பொது தரிசன வழியை பார்த்து ஒரு ஊஊகூஏ கேமராவும உள்ளது. உண்டில்களை பார்த்தவாறு ஊஊகூஏ கேமரா உள்ளது.

217. It was strenuously submitted on the side of the accused persons that the evidence of P.W-21 cannot be acted upon since the rough sketch prepared by DSP Vishnupriya does not make any mention about the availability of the CCTV

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camera in the temple. In order to bring more clarity on this issue, we decided to make a spot inspection at the Ardhanareeshwarar temple.

218. Accordingly, we exercised our powers under Section 310 of Cr.PC and visited the Ardhanareeshwarar temple on 22.01.2023. With the assistance of the Executive Officer of the temple and other staff belonging to the temple, we found that originally, 8 CCTV cameras were available during the year 2015. The first camera was available in the western gate of the temple. The second camera was available near the Sengottuvelavar Sannidhi which leads to the main Sannidhi. The third camera was available after entering into the Sengottuvelavar Sannidhi. The fourth camera was available at the place where the DVR unit was located. The fifth and sixth cameras were available (now removed) at the Moolavar Sannidhi. The seventh camera is available in the path coming from the eastern gate exit and the eight camera was available (now removed) in the path that leads to the western gate to capture the people standing in the queue. During our visit, we were informed that certain new CCTV cameras were also fixed and we carefully noticed the new cameras also. For proper appreciation, the scanned image of the hill temple layout and the CCTV locations is reproduced hereunder:

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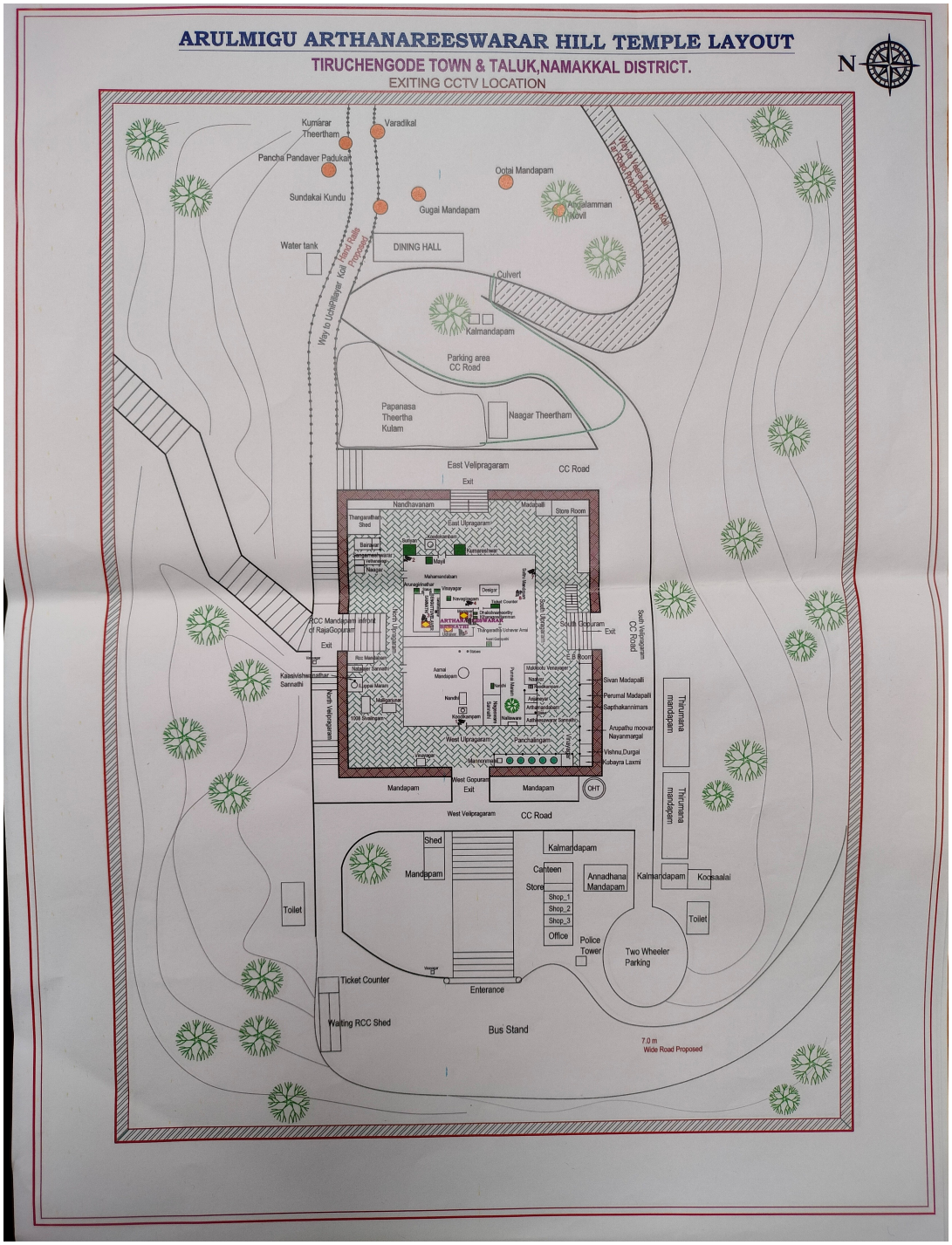

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219. We are satisfied that CCTV cameras were available in the temple and just because DSP Vishnupriya did not mention about the same in the rough sketch, that does not take away the fact that CCTV cameras were available on the spot. Since the entire case of the prosecution starts from the CCTV footages, we undertook a local inspection to ensure the presence of CCTV cameras and the place where the DVR unit and the monitor were kept. We also had the advantage of closely understanding the layout of the entire temple.

220.The specific case of the prosecution is that, the deceased Gokulraj and Swathi (PW4) entered the temple from the western entrance at about 10:52 am., and were inside till about 11:58 am. The CCTV camera captures footages from inside the temple. It is not the case of defense that the content and the Panorama in the CCTV footages does not relate to Ardhanareeshwarar Hill Temple premises.We could also correlate in a holistic manner the footages and the content therein during our physical visit to the temple. Since the footages undisputedly relates to the recordings in the western entrance as well as inside the temple premises, the fact of existence of the 8 CCTV cameras in the year 2015, stands ratified.

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221. Insofar as the CCTV footages are concerned, it has been marked as Ex.P-297 (M.O.36). The video footages that were taken into consideration and examined, for proper understanding, is tabulated hereunder:

Camera No.	Time – when the marked individuals appeared in the video footages	Remarks
CAM 1	10:52:53 to 10:52:57	Gokulraj and Swathi are seen entering the temple together in clear view of the camera.
CAM 2	10:54:02 - 10:54:10	Gokulraj and Swathi are seen appearing in the hazy view of the camera.
CAM 3	10:55:02 - 10:55:10	Gokulraj and Swathi are seen appearing in the hazy view of the camera.
CAM 5	10:55:27 - 10:56:57	Gokulraj and Swathi are seen in the hazy view of the camera.
CAM 2	11:21:46 - 11:21:52	Selvaraj, Ranjith, Ragu@Sridar, Chandrasekar and Jothimani are seen appearing one by one in camera.
CAM 2	11:25:23	Kumar@Sivakumar is seen in the hazy view of the camera.
CAM 5	11:26:44- 11:28:02	Satishkumar, Yuvaraj, Arun, Jothimani, Chandrasekar, Selvaraj, Kumar@Sivakumar, Ranjith, Ragu@Sridarare seen appearing one by one in the hazy view.

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CAM 1	From 11:37:27 to 11:39:25	Kumar@Sivakumar is seen going out with a cell phone at 11:37:27 and followed by Arun at 11:37:55. Both were standing in the camera view. Arun is seen entering into the temple at 11:39:10 while Kumar @Sivakumar is seen entering the temple again at 11:39:25.
CAM 1	From 11:38:43 to 11:39:14	Ragu@Sridar, Selvaraj, Ranjith and Sathishkumar are appearing one by one in the view of the camera.
CAM 1	From 11:42:48 to 11:43:30	Kumar@Sivakumar and Arun were seen going out of the temple and standing in the view of the camera.
CAM 1	11:50:01	Kumar@Sivakumar is seen entering into the temple again.
CAM 1	11:50:10	Arun is seen entering into the temple again.
CAM 1	11:57:55 – 11:58:24	A group of individuals (Chandrasekar, Swathi, Jothimani, Yuvaraj, Gokulraj, Arun, Kumar@Sivakumar, Selvaraj, Ranjit, Sathishkumar, Ragu@Sridar) are seen moving out of the temple one by one in the camera view.

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CAM 1	11:58:38 – 11:58:48	A group of people (Sathishkumar, Arun, Yuvaraj, Selvaraj, Gokulraj, Ranjith, Ragu@Sridar and Kumar@ Sivakumar)are seen to get inside one by one in to the temple in the camera view.

222. It can be seen from evidence that the hard disk was seized on 28.06.2015 from the temple by DSP Vishnupriya and it reached the Court on 20.07.2015 (Ex.P-454). When it was sent for expert analysis to P.W-78, it was initially returned by P.W-78 on the ground that it cannot be operated without the DVR and the same is evident from Ex.P238. Thereafter, the DVR (M.O.37) was seized on 15.10.2015 and it was handed over to P.W-78. An adapter/ charger (M.O.38) was also handed over along with the DVR. The mouse was also handed over to P.W-78 and the same was marked as M.O.39. Thereafter, P.W-79 operated the hard disk in the DVR unit. The report along with the photographs that were extracted on running the hard disk has been marked as Ex.P-240. The CCTV footages were also downloaded in a DVD and the same was marked as Ex.C1. It will also be relevant to extract what P.W-79 had stated in this regard in her evidence:

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"நீதிமன்றத்தில் உள்ள அ.சா.ஆ.297 (சா.பொ.36) இந்த வழக்கிற்கும் சம்மந்தம் இல்லை என்று சொன்னால் அது சரி யல்ல. இந்த வழக்கில் தாக்கல் செய்யப்பட்டுள்ள DVR, Adopter, Mouse ஆகியவற்றிற்கும், இந்த வழக்கிற்கும் சம்மந்தமில்லை என்று சொன்னால் அது சரியல்ல.

(பின்னிட்டு பதிவு ஏற்பட்டிருக்க முடியாது என்றும் தேதியை பதிவில் உள்ளீடு செய்ய முடியாது என்றும் சாட்சி விளக்கம் அளிக்கிறார்). இந்த பதிவுகள் எல்லாம் புலன் விசாரணை அதிகாரியால் தயாரிக்கப்பட்டுள்ளது என்று சொன்னால் அது சரியல்ல.

காவல்துறையினர் வேண்டுக்கோளுக்கு தகுந்தாற்போல் அறிக்கை பெறப்பட்டுள்ளது என்று சொன்னால் அது சரியல்ல."

223. The prosecution had examined P.W-89, who seems to be the person who installed the DVR in the temple. His evidence is not clear as to whether he had retrieved the hard disk from the DVR. His evidence is only to the effect that he had installed a new hard disk on 30.06.2015.

224. P.W-90 is the Assistant Commissioner of HR & CE, who speaks about the request made by the Police to remove the hard disk for the purposes of investigation. He also speaks about engaging P.W-89 for the purpose of fixing the hard disk in the DVR. This witness was not present in the temple when the hard disk was seized and it is only from the evidence of P.W-21, it can be seen that

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DSP Vishnupriya had seized the hard disk under seizure mahazar marked as Ex.P-46.

225. The learned counsel appearing on behalf of the accused persons submitted that there is absolutely no clarity as to who removed the hard disk from the DVR, when it was retrieved and under whose control the DVR was maintained. There is also no clarity as to what procedure was adopted while dismantling the hard disk and while handing it over to DSP Vishnupriya. Hence, the very seizure was put to question. In the present case, DSP Vishnupriya unfortunately committed suicide and hence, a lot of events that took place during her investigation are not very clear. It is also evident that she lacked expertise in dealing with electronic evidence and she did not even know that the hard disk cannot be operated in the absence of DVR. Hence, till the DVR was seized and was handed over to P.W-79, there was no scope for operating the hard disk. If the hard disk cannot be operated till it is run through the DVR, there is no scope for any manipulation of the hard disk which contained the CCTV footages.

226. It will be relevant to take note of the evidence of P.W-79 in this regard hereunder :

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"நான் அளித்த அறிக்கை அயிட்டம் 1 லிருந்து 7 வரையிலான கைப்பேசிகள் சம்மந்தப்பட்டதில் அயிட்டம் 8 வன்தட்டைப் பற்றி அதனுடைய மென்பொருள் இல்லாது இயங்காது என்று குறிப்பிட்டு உள்ளேன்".

The defence had put certain questions in the cross-examination and the following answers were given by P.W-79:

1. "அ.சா.ஆ.297 (சா.பொ.36)–ல் 23.6.2015–ம் தேதிக்கான படப்பதிவுகள் அனைத்தையும் முழுவதுமாக ஆய்வு செய்து அறிக்கை அனுப்பினேனா என்று கேட்டால் ஆய்வு செய்துதான் அறிக்கை அனுப்பினேன். சிசிடிவியில் மொத்தம் எத்தனை கேமரா இருக்குமோ அத்தனை கேமராவிற்குமான பதிவும் இருக்குமா என்று கேட்டால் Focus செய்யப்பட்டிருந்தால் இருக்கும். அ.சா.ஆ.297 (சா.பொ.36) இல் கேமரா 1, 5 இல் உள்ள பதிவுகளை மட்டும் தான் ஆய்வு செய்துள்ளேன் என்று சொன்னால் அது சரியல்ல. அனைத்து கேமராக்களிலிருந்த பதிவுகளையும் ஆய்வு செய்தேன். நீதிமன்றத்திலிருந்து கேட்கப்பட்டிருந்த கேள்விகள் தொடர்பான சங்கதிகள் கேமரா 1, 5 இல் இருந்ததால் அது சம்மந்தமாக அறிக்கை அனுப்பினேன். எனது அறிக்கை அ.சா.ஆ.240 இல் 23 புகைப்பட நகல்களையும் இணைத்துள்ளேன். அந்த புகைப்படங்கள் அ.சா.ஆ.297–அல் இருந்து எடுக்கப்பட்டவைகள்".

2. "ஒவ்வாரு கேமராவின் தன்மையை பொறுத்து பதிவு செய்யப்படும் விஸ்திர்ணம் துல்லியதன்மை மாறுபடும். நான் இதுவரை திருச்செங்கோடு அர்த்தனாரீஸ்வரர் கோவிலுக்கு சென்றதில்லை. DVR மேராவில் பதிவாகும் காட்சிகளை தன்னுள் சேமித்து வைத்துக்கொள்ளும். அது ஒவ்வொரு கம்பெனிக்கும் தகுந்தமாதிரி மாறுபடும் என்று சாட்சி கூறகிறார். படப்பதிவுகள்

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எவ்வாறு சேமிக்கப்படுகின்றன என்ற தொழில்நுட்பம் குறித்து எனக்கு தெரியும். DVR ல் உள்ள ரெசப்பட்டார் Unit மூலம் ஒளிஒலிப்பதிவுகள் சேமிக்கப்படுகின்றன. DVR ல் உள்ள வன்தட்டில் உள்ள சங்கதிகளை பென்டிரைவ் முலம் பதிவிற்ககம் செய்யமுடியும் ஆனால் மென்தட்டில் பதிவிற்க்கம் செய்ய முடியாது. DVR மூலம் எந்த கேமராவிலிருந்தும் காட்சிகளை பதிவு செய்து கொள்ள முடியும். DVR என்பது வேறு. DVD player என்பது முற்றிலும் வேறானது".

227. It is clear from the above that till the DVR was seized on 15.10.2015 and handed over to the expert, there was absolutely no chance of tampering with the hard disk which could be played only through the DVR. This categoric statement made by the expert was not seriously countered in the cross examination and the evidence of P.W-79 in this regard becomes completely reliable.

228. Ultimately, the original hard disk (Ex.P-297) was marked before the Court and it was also operated through the DVR (M.O.37). This does not require any certificate under Section 65-B(4) of the Indian Evidence Act since this is primary not secondary evidence. Even though Ex.C.1 was shown to nearly 13 witnesses and the hard disk was made to run in the Court during the course of trial with the help of P.W-87, there is absolutely no material to show what is contained in Ex.C1 is in variance with the footages contained in Ex.P-297

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(M.O.36). That apart, the defence did not take any steps to establish that Ex.C.1 and Ex.P-297 are not the same and no questions have been put in this regard. Hence, such a plea cannot be permitted to be taken for the first time before the Appellate Court.

229. This case had become very sensitive as there was a communal element involved. Hence, a lot of interest was shown by many persons including TV Channels and sometimes, things backfire due to over enthusiasm. In view of the same, when DSP Vishnupriya was attempting to see the footages in the temple premises, someone had recorded it, probably in their mobile phone and the footages started doing the rounds, even before the formal seizure of Ex.P-297 on 28.06.2015. The non-mentioning of the CCTV cameras in the rough sketch, permitting the recording of the footages when it was viewed in the temple premises, removing the hard disk and handing it over to the expert even without the DVR, improper recording of the seizure of the hard disk by not providing the information as to how it was done and with whose help it was done etc., clearly exposes the inexperience of DSP Vishnupriya in cases involving electronic evidence. To make things more difficult, she also committed suicide during the course of investigation. However, as the Supreme Court has consistently reminded us the criminal justice system should not be made a

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casualty for the wrongs committed by the investigation officers in a given case (***State of Karnataka*** *v.* ***K. Yarappa Reddy*** reported in ***(1999) 8 SCC 715)***. If the Court is convinced with the materials placed before it, the Court can always act upon it and irregularity and illegality during investigation cannot be a ground for rejecting the case of the prosecution. This ratio is perfectly applicable to the facts of the present case.

230. P.W-102 who took over the investigation for the CBCID has also spoken about the CCTV footages in the following manner:

> "26.06.2015 அன்றே திருச்செங்கோடு மலைக்கோவிலில் உள்ள சிசிடிவி பதிவு காட்சிகளை பார்வையிட்டடுள்ளார். 27.06.2015 அன்று சிசிடிவி கேமரா பதிவுகளை புலன்விசாரணைக்கு உட்படுத்த கோரி திருச்செங்கோடு அர்த்தனாரிஸ்வரர் கோவில் உதவி ஆணையாளருக்கு கடிதம் கொடுத்துள்ளார் என்று சாட்சியமளித்துள்ளார். 28.06.2015–ம் தேதி திருச்செங்கோடு மலைக்கோவிலில் இருந்த சிசிடிவி மேகரா வன்தட்டை சாட்சிகள் சக்திவேல் மற்றும் தங்கவேல் முன்னிலையில் செல்வி.விஷ்ணுபிரியா கைப்பறியுள்ளார். அந்த வன்தட்டு அ.சா.ஆ.297 ஆக குறியீடு செய்யப்பட்டுள்ளளது. மேற்படி வன்தட்டு கைப்பற்றப்பட்டது சம்பந்தமான படிவம் 91 அ.சா.ஆ.454 ஆகும்".

231. P.W-102 was also cross-examined elaborately on the statement recorded from P.W-21 and he has spoken very clearly about the availability of 8

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cameras. He has categorically rejected the suggestion made by the defence as if no CCTV cameras were available in the temple. The evidence of P.W-99 also confirms the availability of the CCTV cameras in the temple. This witness was assisting DSP Vishnupriya when she was investigating the case.

232. In the light of the above discussion, the CCTV footages that were run from the DVR (M.O.37) can be relied upon. Even though some of the witnesses were only shown Ex.C.1, that does not make any difference since Ex.C.1 is not in variance with the footages contained in Ex.P-297 (M.O.36). Ex.C.1 pales into insignificance in the light of the availability of the original (primary) evidence viz., the hard disk (Ex.P-297) operated through the DVR (M.O.37).

233. It was submitted that P.W-93, who is the scientific assistant has only viewed the CCTV footage from the DVD that was sent by P.W-79 and he has further downloaded it in a pen drive while comparing the persons found in the CCTV footages with the photographs sent to him and while giving his report (Ex.P-328). It was further submitted that P.W-93 was the scientific assistant from whom report was received after comparing the identity of the accused persons. Ex.P-305 to Ex.P-311 and Ex.P-312 to Ex.P-327 were the photographs of the accused persons. These photographs were downloaded from two CDs (M.O.89

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and M.O.90). The photographs were not accompanied with a Section 65-B certificate. The CCTV footages were seen by P.W-93 by downloading it to a pen drive. Ultimately, the snapshots, numbering 19, were taken from the video and it was also not accompanied with a Section 65-B certificate. In view of the same, Ex.P-328 report given by P.W-93 cannot be acted upon.

234. In the considered view of this Court, it is too late in the day for the appellants/accused to raise all these objections at the stage of appeal. When these exhibits and material objects were marked along with the report Ex.P-328, no objections were raised on the ground of not filing Section 65-B certificate or on any other ground. Hence, such an objection cannot be entertained at the appellate stage. We carefully analysed the law in this regard supra and summed up the legal position at para 197 and para 197(g) specifically covers this issue. Even in the cross-examination, questions were put to test the veracity of the finding in the report marked as Ex.P-328 and there is nothing to discredit the evidence of P.W-93 or the report submitted by P.W-93 and marked as Ex.P-328.

235. The next electronic evidence to be dealt with is M.O.41 and M.O.94 which pertains to the conversation between P.W-3 and P.W-4. While explaining the sequence of events, it was seen that P.W-3 had contacted the mobile number

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of P.W-5 and this phone call was attended by P.W-4. This Court also recorded the fact that P.W-3 had put the call on speaker and P.W-26, who was present during the conversation recorded the same in his mobile phone (M.O.41). What was recorded by P.W-26 was transferred to the mobile phone of P.W-3 through Bluetooth. This conversation was recorded in a CD and was marked through P.W-79 and M.O.94.

236. It was contended on the side of the appellants/accused that since M.O.94 was not accompanied with a Section 65-B certificate, it is inadmissible.

237. On the side of the prosecution, it was contended that when M.O.94 was marked before the Court, no objections were raised on the side of the appellants/accused and hence, such objections cannot be raised at the appellate stage. Therefore, it was contended that there is absolutely no bar too act upon M.O.94 which contained the conversation between P.W-3 and P.W-4.

238. P.W-3, in his evidence, has clearly spoken about the conversation that he had with P.W-4. This conversation has also been spoken to by P.W-26, who was present at that time and who had recorded the same in his mobile phone (M.O.41). During the cross-examination, P.W-26 has stated that he had

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handed over M.O.41 along with his memory card and the conversation got recorded only in the memory card. P.W-79, in her deposition has stated that when she analysed the mobile phone, she found that a conversation between a man and a woman was captured in a folder "Voice 002.MPEG-44 Audio". This was downloaded in a CD by P.W-79 and it was marked as M.O.94. The report in this regard has been marked as Ex.P-253 through P.W-79. There was absolutely no objection when M.O.94 was marked. The only objection that was raised was that there was no indication in the report about the conversation between a man and a woman. In view of the same, such an objection cannot be raised for the first time before the appellate court. In view of the same, there is no bar for the Court to act upon M.O.94.

239. This Court has already discussed about the conversation between P.W-3 and P.W-4 supra, which was one of the most important link in the chain of circumstances through which P.W-1 and P.W-3 became aware about the reason behind the missing of Gokulraj. Even though P.W-4 both before the Trial Court as well as before this Court was denying any such phone call and was also feigning ignorance regarding the female voice that was heard in the open Court, the trustworthiness of P.W-4 is an issue which will be separately dealt with by this Court. For the present, it will suffice to note the fact that P.W-4 while giving the

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statement under Section 164 of Cr.P.C before the Magistrate has clearly stated about this conversation that she had with P.W-3. This statement corroborates the evidence of P.W-3 in this regard and it is further corroborated by the evidence of P.W-26. Hence, we hold that M.O.94 is admissible and it can be acted upon as an important piece of evidence.

240. The next important piece of electronic evidence to be dealt with is the live telecast of the Nerpadapesu program in which A1 participated and the relevant CD was marked as Ex.P-549 through P.W-106. This was the interview that was given by A1 in the program on 10.10.2015. When this CD was marked, the Section 65-B certificate was also marked as Ex.P550. The very same CD was also marked as Ex.C.9 through C.W-2.

241. It was contended on the side of the appellants/accused that Ex.P-550 did not fulfil the requirements of Section 65-B(2) of the Evidence Act. It must be mentioned here that no objection was raised when the Section 65-B certificate was marked along with Ex.P-549 and such an objection cannot be raised for the first time before the appellate Court regarding the insufficiency of the certificate, not satisfying the relevant provision. The same CD was marked as Ex.C.9 through C.W-2 and even at that point of time, no objection was made. Hence,

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there is absolutely no bar in acting upon Ex.P-549 and Ex.C.9, which are important pieces of evidence pertaining to certain statements made by A1 when he voluntarily gave an interview in a live program.

242. The next important electronic evidence to be dealt with is the suicide video of the deceased marked as M.O.47 and all the other relevant reports marked through P.W-79, P.W-52 and P.W-93.

243. M.O.47 is a 2GB memory card that was seized from the office of A1 based on the admissible portion of the confession of A1 marked as Ex.P119. It was contended on the side of the appellants/accused that the 2GB memory card contains a false suicide video of the deceased Gokulraj in a 3:14 MB file created on 24.06.2015. It was further contended that the very recovery of M.O.47 is highly suspicious since the involvement of A1 in the crime was known even as early as on 24.06.2015 and even subsequently, when some of the accused persons were arrested and their confessions were recorded on 01.07.2015 and inspite of the same, it was contended that the office of A1 not being put to search is artificial. In view of the same, it was submitted that the office of A1 being searched on 16.10.2015 and M.O.47 being seized from the office is a made up story on the side of the prosecution.

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244. The 2GB memory card viz. M.O.47 was marked through P.W-36. This was sent to the forensic expert P.W-79 through whom her report was marked as Ex.P-246. M.O.89 is the CD containing the suicide speech of the deceased Gokulraj and this was also sent to the forensic science department marked through P.W-93, who had submitted his report marked as Ex.P-328. It was vehemently contended on the side of the appellants/accused that there is no explanation from where this CD was made and what was the source of the video which was copied in the CD and who did it and when it reached the hands of the investigation officer and when it ultimately reached the analyst. Further, the Section 65-B certificate was not given along with the CD and it was given subsequently and thereby, M.O.89 is inadmissible in evidence.

245. When the 2GB memory card was marked as M.O.47 through P.W-36, no objections were raised. Similarly, when M.O.89 was marked through P.W-79, no objections were raised. There is no material to show that there is any variance between M.O.47 and M.O.89. The genuineness of the contents of the 2GB memory card and the CD containing the suicide video is evident from the fact that the 3:14 MB video found therein perfectly matched with the subcutaneous memory of M.O.85 (Ex.P-244) recovered from A2 on 18.10.2015 where a file that was created on 23.06.2015 between 4:10:48 p.m. and 4:25:29

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p.m. was shown to be deleted as per the report marked as Ex.P-244 through P.W-79. This perfectly matches the case of the prosecution to the effect that the suicide video was attempted to be taken in the mobile phone of the deceased Gokulraj and it got jammed since the pattern lock was not properly opened and hence, the memory card in that phone was used in the mobile phone of A2 (M.O.85). This video created from the mobile phone of A2 was transferred to the 2GB memory card seized from A1. The 3:14 MB file contained in M.O.47 was perfectly matching the 3:14 MB file deleted from the mobile phone of A2 and such deletion was detected in the subcutaneous memory as per the report of P.W-79.

246. There was absolutely no cross-examination regarding the creation of the video in M.O.85 seized from A2 and the video in M.O.47 seized from A1. It is not the case of A1 and A2 that they were tortured when these two material objects were recovered from them. In view of the same, the suicide video of the deceased and the reports that were given by the experts are all admissible in evidence and it can be acted upon by the Court.

247. The next important electronic evidence pertains to the Call Detail Records. All these Call Detail Records were marked through the nodal officers

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P.W-62, P.W-63, P.W-82, P.W-101, were all accompanied with Section 65-B certificates. Even though it was contended that proper Section 65-B certificate was not produced, there was no specific question put to the witnesses in this regard. Hence, this issue cannot be raised at the appellate stage. Accordingly, all the Call Detail Records are held to be admissible and can be acted upon by this Court.

248. The last piece of electronic evidence is M.O.46 which is the DVD that was marked through P.W-33 and Ex.C.7 and Ex.C.8 marked through C.W-2. This pertains to the interview that was given by A1 on 04.10.2015 to the Puthiya Thalaimurai news channel when he was in abscondence during the course of investigation. It was contended that the Section 65-B certificate which was marked as Ex.C.7 was not in accordance with Section 65-B (2) of the Evidence Act and P.W-106 was not in lawful control of the system from which the DVD/CD was given by the news channel. When M.O.46 was marked through P.W-33, it was objected and it was marked subject to objection. However, subsequently, the CD was marked through P.W-106 as Ex.P-549 along with a Section 65-B certificate marked as Ex.P-550. It was also independently marked through C.W-2 as Ex.C.8 along with a Section 65-B certificate marked as Ex.C7. No objections were raised on the side of the accused persons and hence, objections with

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regard to the requirements of the Section 65-B certificate cannot be raised for the first time in the appellate stage.

249. In view of the above, this Court can certainly act upon the electronic evidence pertaining to the interview given by A1 to the Puthiya Thalaimurai news channel.

250. The evidence of the handwriting expert P.W-64 on the suicide note of the deceased, handwriting of P.W-4 and the handwriting of A2, does not suffer from any inherent defect with regard to the admissibility of the evidence and the report given by P.W-64 and marked as Ex.P-207, Ex.P-211 and Ex.P-209 can be acted upon at the time of appreciation of evidence.

251.We have dealt with each link in the chain of circumstances in detail and we find that every circumstance has been fully proved and it forms a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused. As to the test applied by us to come to the conclusion that the prosecution has proved the chain of circumstances, we remind ourselves the test that is provided under Section 3 of the Evidence Act and also the test applied by the Apex Court in ***State of Maharashtra v. Mohd. Yakub*** reported in ***AIR 1980***

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SC 1111 and which was followed by the Division Bench of this Court in ***The Deputy Commissioner of Police, District Crime Branch, Chennai and Ors. vs. D. Marudhupandiyan and Ors.*** reported in ***2022 (2) MWN (Cr.) 321.***

252.Thus, having cumulatively examined the nine circumstances projected by the prosecution we find that the prosecution has proved the chain of circumstances clearly and cogently. The chain of circumstances when viewed cumulatively is clearly consistent with the hypothesis of guilt projected by the prosecution. We are unable to find any perversity in the findings of the trial court in this regard.

VII. <u>CONDUCT OF PW-4</u>

253. It will suffice to extract the orders passed by this Court during the hearing of these Criminal Appeals, to understand the conduct and trustworthiness of P.W-4. This Court passed the following order on 24.11.2022 :

> *"Having gone through the record of the trial court we find that PW-4, had initially played an active role in assisting the prosecution at the stage of investigation. Being a star witness, the investigation had her statement recorded by the Magistrate under Section 164 Cr.P.C. However, it appears that something had transpired between the date of recording of the 164 Cr.P.C statement and time she was called to depose in her examination-in-chief before the trial court. PW-4 appears to*

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have completely turned turtle and resiled from her previous statements. The trial court, without exercising power under Section 165 of the Evidence Act and eliciting the cause for this sudden somersault, simply declared PW-4 as hostile and discarded her evidence.

2. *The scourge of witnesses turning hostile is now a regular feature particularly in sensitive cases. Way back in* ***Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374,*** *the Supreme Court emphasized the duty of the State in protecting the witnesses so as to ensure that during a trial the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. The Court added that if ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the courts mere mock trials as are usually seen in movies.*

3. *There exists a duty on the trial court to play a participatory role in the trial particularly in cases where star witnesses turn hostile and flagrant contradictions are noticed in the evidence. It is for this reason that the trial court has been invested with powers under Section 165 of the Evidence Act. In* ***Mina Lalita Baruwa v. State of Orissa, (2013) 16 SCC 173,*** *the Supreme Court observed:*

"As has been held by this Court in Zahira Habibulla H. Sheikh [Zahira Habibulla H. Sheikh v.

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State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] , a criminal court cannot remain a silent spectator. It has got a participatory role to play and having been invested with enormous powers under Section 311 CrPC, as well as Section 165 of the Evidence Act, a trial court in a situation like the present one where it was brought to the notice of the court that a flagrant contradiction in the evidence of PW 18 who was a statutory authority and in whose presence the test identification parade was held, who is also a Judicial Magistrate, ought to have risen to the occasion in public interest and remedied the situation by invoking Section 311 CrPC, by recalling the said witness with further direction to the Public Prosecutor for putting across the appropriate question or court question to the said witness and thereby set right the glaring error accordingly. It is unfortunate to state that the trial court miserably failed to come alive to the realities as to the nature of evidence that was being recorded and miserably failed in its duty to note the serious flaw and error in the recording of evidence of PW 18. In this context, it must be stated that the prosecutor also unfortunately failed in his duty in not noting the deficiency in the evidence. The observation of the High Court while disposing of the revision by making a casual statement that the appellant can always file the written argument equally in our considered opinion, was not the proper approach to a situation like the present one. What this Court

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wishes to ultimately convey to the courts below is that while dealing with a litigation, in particular, while conducting a criminal proceeding, maintain a belligerent approach instead of a wooden one."

Emphasizing that it was the duty of the Court to clear the record where a witness had made a wrong statement contrary to the record, the Supreme Court went on to observe as under:

"*In criminal jurisprudence, while the offence is against the society, it is the unfortunate victim who is the actual sufferer and therefore, it is imperative for the State and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, duty and responsibility of the court to be alive and alert in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law reflect upon every bit of vital information placed before it. It can also be said that in that process the court should be conscious of its responsibility and at times when the prosecution either deliberately or inadvertently omit to bring forth a notable piece of evidence or a conspicuous statement of any witness with a view to either support or prejudice the case of any party, should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight. Neither the prosecution nor the court should remain a silent spectator in such*

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situations. ***Like in the present case where there is a wrong statement made by a witness contrary to his own record and the prosecution failed to note the situation at that moment or later when it was brought to light and whereafter also the prosecution remained silent, the court should have acted promptly and taken necessary steps to rectify the situation appropriately.*** *The whole scheme of the Code of Criminal Procedure envisages foolproof system in dealing with a crime alleged against the accused and thereby ensure that the guilty does not escape and the innocent is not punished. It is with the above background, we feel that the present issue involved in the case on hand should be dealt with."*

4. *Having noticed this serious lapse on the part of the trial court it is now necessary to examine whether this Court should exercise its power to take additional evidence under Section 391 Cr.P.C to recall PW-4. Section 391 Cr.P.C reads as follows:*

"391. Appellate court may take further evidence or direct it to be taken. .

—(1) In dealing with any appeal under this Chapter, the appellate court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the appellate court is a High Court, by a Court of Session or a Magistrate.

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(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the appellate court, and such court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

The key words in Section 391(1) are "if it thinks additional evidence to be necessary". The test for exercising power to take additional evidence was explained by Hidayatullah, J in ***Rajeswar Prasad Misra v. State of W.B.,:AIR 1965 SC 1887****, in the following way:*

"Additional evidence may be necessary for a variety of reasons which it is hardly proper to construe one section with the aid of observations made to do what the legislature has refrained from doing, namely, to control discretion of the appellate court to certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it."

Thus, the key question is not whether it would be impossible for the appellate court to pronounce judgment without taking additional evidence, but whether a failure of justice would result if such additional evidence is not taken.

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5. *The power under Section 391 Cr.P.C is not confined to recalling a witness for further examination in the light of his previous statement (See* ***Sudevanand v. State, (2012) 3 SCC 387).*** *In* ***Sukhjeet Singh v. State of U.P., (2019) 16 SCC 712,*** *the Supreme Court observed that the power of the appellate court under Section 391 Cr.P.C is not hedged with any fetters and ultimately rests on the need to secure the ends of justice. The Supreme Court observed:*

"From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 CrPC of the appellate court. All powers are conferred on the court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people."

6. *There could be no greater affront to the system of administration of justice if Courts are to remain mute spectators when star witnesses turn hostile in front of it. We have no hesitation in saying that there exists a duty on the Court, in such cases, to exercise powers under Section 165 of the Evidence Act to put necessary questions to the witness to satisfy itself as to whether the witness is answering questions truthfully. The object and purpose of Section 165 of the Evidence Act was outlined by Sir James Fritz Stephen, in his speech on 31.03.1871, presenting the report of the Select Committee on the Bill to define and*

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amend the law of Evidence. Stephen observes:

"Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.

That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the existence of a well-educated Bar, co-operating with the Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases - probably the vast numerical majority - the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more distinctly then he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly

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thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the' proceedings, irrespectively of the rules of evidence binding on the' parties and their agents, and we have inserted in the Bill a distinct' declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter."

It is trite that an appeal is a continuation of the original proceeding and the appellate Court is not denuded of the power under Section 165 of the Evidence Act to clarify certain aspects of the case, if the need arises.

7.** As was pointed out in **Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158:

"In the case of a defective investigation the court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])"

Unlike the trial court which was rest content with playing the role of an umpire in a criminal trial, this Court cannot remain a mute spectator to what, prima facie, appears to be an attempt to derail and subvert the course of justice. The appellate

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court cannot sit like monks in a cell balancing right against wrong. To satisfy our judicial conscience, particularly in the light of the fact that this case is loaded with communal overtones, we have found it necessary to exercise our powers under Section 391 Cr.P.C suo motu to recall PW-4 to the witness box. We find that this course is absolutely imperative without which a clear failure of justice would be occasioned.

8. *We enquired the Investigation Officer in order to ascertain the whereabouts of P.W-4. On enquiry, it was informed to us that P.W-4 has now settled at Namakkal District in her matrimonial home.*

9. *On going through the entire materials placed before us, we found that there was lack of protection for P.W-4 before she came before the trial Court to depose as a witness. We do not want to repeat that mistake and hence, there shall be a direction to the Superintendent of Police, Namakkal District to forthwith provide police protection to Swathi (P.W-4) and her family members. The Police shall ensure that no one is allowed to meet P.W-4 or make any phone calls to her and her family members. There shall be a further direction to the Police to also provide police protection to the parents of PW4 and their family members. These safeguards must be taken to ensure that P.W-4 comes before this Court without any fear in her mind, when she is questioned by this Court.*

10. *The Investigation Officer shall produce P.W-4 before this Court tomorrow (25.11.2022). P.W-4 shall be brought with sufficient police protection and she shall be directly brought to the Judges' Chamber. Thereafter, P.W-4 will be brought directly to the Court from the Judges' Chamber.*

P.W-4 is recalled for examination on 25.11.2022."

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254. When the matter came up for hearing on 30.11.2022, this Court passed the following order:

> "*Pursuant to the order passed by us on 24.11.2022, we called P.W.4 to record her statement in exercise of our powers under Section 391 Cr.P.C read with Section 165 of the Indian Evidence Act. Pursuant to this order, PW4 was produced before us and we had put several questions to PW4 which was recorded on oath on 25.11.2022. During examination, we found that PW4 was repeatedly evading in making a true statement or was denying certain obvious facts. While recording the statement of PW4, we had specifically recorded the demeanor of PW4.*
>
> *2.We have physically seen PW4 in the witness stand before us and we also had the advantage of seeing the video and it was very clear and apparent that the person who was seen in the video, was none other than PW4, along with the deceased. The CCTV footage in M.O.36 (Ex.P297) was played to PW4 and we specifically asked her to identify the two persons who are seen in the video. The witness made a statement to the effect that, out of the two persons seen in the video, one person looked like the deceased Gokulraj. However, she expressed ignorance on the identity of the lady who was seen next to him. In other words, PW4 refused to identify herself. We repeatedly asked PW4 to come out with the truth atleast by identifying the person who is seen in the video and PW4 did not budge an inch. When we wanted to ascertain as to whether PW4 is*

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under any pressure/threat from any side that prevented her from making a true statement before the Court, PW4 categorically stated that no pressure has been exerted on her from any quarters.

3.After affording sufficient opportunity to PW4 and after explaining her the consequences of making false statement before the Court on oath, we made it clear to P.W.4 that contempt proceedings will be initiated against her. We asked PW4 to once again think over and come back and accordingly, the matter was adjourned for hearing to 30.11.2022.

4.Even today, PW4 was administered oath and we asked PW4 as to whether she wants to stand by the statement made on 25.11.2022 or if she wants to make any other statement. PW4 made it clear that she will stand by the statement made on 25.11.2022. In view of the same, we are clear that PW4 understands the consequence of making such a statement before the Court. Accordingly, we proceed to pass the following order.

5.A trial becomes meaningful only when truth is uttered by a witness. The journey of a trial is such that neither the Judge nor the Police nor the Public Prosecutor or the Counsel, who is appearing for defence have seen the incident and inspite of the same, each one is grappling to find out the truth and to come a conclusion as to whether the case as projected by the prosecution has been proved or not, based on the evidence collected during the course of trial. It therefore, becomes imperative

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that the witness, who deposes before the court speaks the truth. That is the reason why the witness is administered oath before recording the evidence. It is the statement of the witness made on oath and the materials that are collected during the course of trial, which ultimately throws light and enables a Judge to conclude as to whether the prosecution has proved the case or not.

6.Making a false statement on oath in Courts virtually prevents the Courts from administering justice and it will be a blow to the Rule of Law, if falsity is condoned. At some stage, the Courts and particularly the Higher Courts must send a very strong message that falsity in evidence will not be tolerated and a witness will not be allowed to go scot-free after making a false statement on oath.

7.There is a provision under the Indian Penal Code for proceeding against the witness for perjury. There is a separate procedure that has been prescribed under the Criminal Procedure Code to deal with a person who has committed perjury. Unfortunately, almost all the perjury cases never reaches its logical end. Even in the present case, when the trial court found that PW4 had retracted from the statement made before the Magistrate on oath under Section 164 of Cr.P.C., an order was passed in C.M.P.No.1253 of 2018 dated 20.12.2018 by granting sanction to prosecute PW4 for offence under Section 193 of IPC in line with the procedure contemplated under Section 195 (1) (b) of Cr.P.C. This order was passed in the year 2018 and till

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today, the case has not even moved an inch and it continues to remain at the stage of evidence. In almost all cases where proceedings are initiated for perjury, it never reaches its logical end and at some stage, such cases are given a decent burial.

8.Since we intended to proceed against PW4 for Contempt of Court, we exercise our jurisdiction under Section 407 of Cr.P.C. and transfer the perjury case which is now pending before the Judicial Magistrate No.I, Namakkal, in C.C.No.71 of 2019 to the file of this Court and the said case is merged along with the contempt proceedings initiated by us.

9.The question that arises for consideration is as to whether this Court can initiate Contempt proceedings against a witness of making a false statement on oath.

10.To answer this question, this Court has to necessarily take note of certain judgments of the Apex Court.

11.In ***Zahira Habibullah Sheikh (5) and another Vs. State of Gujarat and Others*** *reported in* ***2006 (3) SCC 374,*** *the Apex Court has held as follows :*

"18. Whatever be the fate of the trial before the court at Mumbai where the trial is stated to be going on and the effect of her statement made during trial shall be considered in the trial itself. Acceptance of the report in the present proceedings cannot have any determinative role in the trial.

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Serious questions arise as to the role played by witnesses who changed their versions more frequently than chameleons. Zahira's role in the whole case is an eye- opener for all concerned with the administration of criminal justice. As highlighted at the threshold the criminal justice system is likely to be affected if persons like Zahira are to be left unpunished. Not only the role of Zahira but also of others whose conduct and approach before the inquiry officer has been highlighted needs to be noted. The inquiry officer has found that Zahira could not explain her assets and the explanations given by her in respect of the sources of bank deposits, etc. have been found to be unacceptable. We find no reason to take a different view."

12.In ***ABCD Vs. Union of India and Others*** *reported in* ***2020 (2) SCC - 52,*** *it was held as follows :*

"14. We may now refer to the development which occurred during the pendency of the writ petition. In FIR No. 314, as well as in the application preferred thereafter, insinuation was definitely made that Respondent was responsible for the incident that occurred on 17-10- 2019. It was also submitted that the petitioner was hit by a car and suspicion was expressed in clear terms that Respondent 7 was behind the episode. As it now turns out, she was not hit by a car but by a thela which prima facie means that the allegations in her sworn statement before this Court were not truthful.

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15. Making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint in writing as stated in said section. In respect of matters coming under Section 195(1)(b)(i) of the Code, in Pushpadevi M. Jatia v. M.L. Wadhawan [Pushpadevi M. Jatia v. M.L. Wadhawan, (1987) 3 SCC 367 : 1987 SCC (Cri) 526] prosecution was directed to be launched after prima facie satisfaction was recorded by this Court.

16. It has also been laid down by this Court in Chandra Shashi v. Anil Kumar Verma [Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks' imprisonment. It was observed as under: (SCC pp. 423-24 & 427, paras 1-2 & 14)

"1. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are,

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therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

*****

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt."

17. In K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481] it was observed: (SCC p. 493, para 39)

"39. If the primary object as highlighted in Kensington Income Tax Commrs. [R. v. General

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Commissioners for Purposes of Income Tax Acts For District of Kensington, ex p Princess Edmond De Polignac, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

18. In Dhananjay Sharma v. State of Haryana [Dhananjay Sharma v. State of Haryana, (1995) 3 SCC 757 : 1995 SCC (Cri) 608] filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the persons concerned were punished.

13.It will also be relevant to take note of the judgment of the Apex Court in ***Dhananjay Sharma Vs. State of Haryana*** *reported in* ***1995 (3) SCC - 757*** *and the relevant portions are extracted hereunder:*

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"38. Section 2(c) of the Contempt of Courts Act 1971 (for short the Act) defines criminal contempt as "the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalised or tend to scandalise or lower or tend to lower the authority of any court; (2) prejudice or interfere or tend to interfere with the due course of judicial proceedings or (3) interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the Rule of Law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message perculates loud and clear that no one can be permitted to undermine the

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dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. In Chandra Shashi v. Anil Kumar Verma, [1995] 1 SCC 421, the respondent produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Hansaria, J. speaking for the Bench observed :

"the stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."

14.In the above judgment, at paragraph No.53, the Apex Court takes note of the fact that the witness had given a false statement before the Court and as a defence for the same, the witness took a stand that he was acting under the pressure of some of the respondents. While dealing with the same, the Apex Court held as follows:

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" It is, however, no defence for him to say that he so acted on account of the fear of the police of Haryana and that he had been 'tutored' by respondents 4 and 5 to make a false statement and file a false affidavit in this Court. He should have known better."

15.It is clear from the above judgments that there is a procedure contemplated under Section 195 (1) (b) of the Code to deal with the offence of perjury. However, perjury is one facet of Criminal Contempt since the person who makes a false statement before the Court on Oath, virtually tries to interfere with the administration of justice and prevents the Court from taking the right decision in the facts of the given case. A false statement given before the Court on oath strikes at the very root of the Criminal Justice System. A Court cannot ignore such a conduct which has the propensity to shake the public confidence in Judicial Institutions. If the Courts become lackadaisical in dealing with false statements given by witnesses on oath, it will virtually dislodge the administration of justice and the dignity of the Court. Hence, apart from the alternative remedy of proceeding against the witness for perjury, it is always open to the Higher Courts to initiate contempt proceedings to ensure that the administration of justice remains unpolluted due to false evidence being tendered before the temple of justice.

16.In many important cases where serious crimes are committed, the Courts are virtually made

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to render acquittal to the accused persons in a platter since every other witness turns around and becomes hostile. The Courts are bound by the procedure that is prescribed by Law and the Courts cannot write judgment based on emotions. Hence, in a criminal case, proving the case beyond reasonable doubt continues to be the test. In order to ensure that the witnesses do not turn around before the Court, there are a few cases where the prosecution takes the effort of recording the statement of witnesses on oath before the Magistrate under Section 164 of Cr.P.C. This is done with the fond hope that witnesses will stand by what they said before the Magistrate. We have to hasten and state that it is not necessary for the witnesses to make the very same statement before the Court at the time of taking evidence and in such circumstances, it is the duty of the witness to state before the Court as to why the witness is retracting from the statement that was made on oath before the Magistrate under Section 164 of Cr.P.C. If, without any explanation, the witness merely retracts and gives a different version before the Court, the Court cannot turn a blind eye and the Court has to necessarily step in to ensure that the witnesses do not take Courts for granted.

17.The witnesses who depose before the Court of Law, at some stage, must be made aware that they cannot go scot-free if they make false statements before Court. Unless stern steps are taken, the witnesses making false statement before Court will

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become a routine affair and it will strike at the very root of Criminal Justice System.

18.In the present case, PW4 made a statement on oath before the learned Magistrate under Section 164 of Cr.P.C. While deposing before the trial court, PW4 completely went against her statement and was treated as a hostile witness. PW4 is not an illiterate woman. She is a well educated woman with an Engineering degree. The learned Magistrate even before recording the statement of PW4 under Section 164 of Cr.P.C had repeatedly informed P.W.4 that she was under no compulsion to make any statement and that she need not answer the questions that are put by the Court. Inspite of understanding the caution given by the Magistrate, PW4 on her own volition, proceeded to give a statement before the Magistrate which was recorded on oath. The evidence of PW4 is very vital in this case since the cause of action for this case starts only from the stage where the deceased is said to have met PW4 on 23.06.2015. The investigation in a criminal case proceeds in line with the statement made by the witnesses and the materials collected during the course of investigation. Hence, the statement made by PW4 during the course of investigation was a very important piece of information which showed the light for the prosecution to proceed further.

19.If really there was some pressure exerted on PW4 to give a statement under Section 164 of Cr.P.C., PW4 should have atleast stated that before the trial Court when her evidence was recorded. PW4

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cannot be allowed to completely disown the statement made by her on oath before the Magistrate and retract at the time of trial, without giving a reasonable explanation as to why she is retracting. It is only under such circumstances, the trial court had initiated perjury proceedings against PW4.

20.During the course of hearing the above Criminal Appeals, we also wanted to ascertain as to why PW4 had retracted from the statement made by her on oath before the Magistrate. We therefore, wanted to give PW4 an opportunity to explain as to why she retracted from the statement given by her on oath before the Magistrate. PW4 is a star witness in this case and hence, we did not want to ignore the evidence of PW4 completely and to secure the ends of justice, we wanted to examine PW4 by calling her in exercise of our powers under Section 391 of Cr.P.C read with Section 165 of the Indian Evidence Act.

21.On 25.11.2022, when we had examined PW4 on oath, we had specifically put a question to her, among other queries, as to what happened on 23.06.2015 ? To such a query, P.W.4 replied that on 23.06.2015, when she was at home, the Police had taken her, along with her mother and father, to the Police Station. We then asked her as to whether she had seen the deceased Gokulraj on 23.06.2015. She answered that she had not seen Gokulraj on that day. We then played the CCTV footage from M.O.36 (Ex.P297) and made PW4 see the footages. We asked PW4 to merely identify the persons, who are seen in the footage. However, for reasons best known, PW4

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was repeatedly refusing to identify herself in the CCTV footage and was giving evasive answers. It was evident to us that the person accompanying the deceased in the video, was none other than PW4. However, surprisingly, while PW4 was able to identify the deceased, she refused to identify herself in the footage. This ex-facie is a false statement that was made before the Court. If PW4 is allowed to go scot-free after making a false statement in facie curiae, it will tantamount to mocking at the Criminal Justice System. PW4 stated that there was no pressure from any side and she is making the statement on her own. If that is the case, PW4 is intentionally making a false statement after clearly understanding the consequences.

22.In view of the above, the perjury proceedings pending before the Judicial Magistrate No.I, Namakkal in C.C.No.71 of 2019 is withdrawn and transferred to this Court and it is merged along with the contempt proceedings initiated against P.W.4 since we do not want PW4 to undergo two separate proceedings for the same cause of action viz., making false statement on oath. If the statement given by PW4 before the learned Magistrate under Section 164 of Cr.P.C is not true, then PW4 has uttered falsity on oath. Once again, PW4 was administered oath before the trial Court and she retracts and completely disowns the statement recorded before the learned Magistrate. If the stand taken by PW4 that the statement made by her before the trial Court is true, then there is absolutely no

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explanation as to why she made a completely different statement before the Magistrate when it was recorded under Section 164 of Cr.P.C. Once again, this Court wanted to give an opportunity to PW4 to clarify herself and unfortunately, PW4 continued to make false statement before this Court also and it went to the extent of PW4 refusing to identify herself in the CCTV footage that was shown to her. This attitude of PW4 clearly amounts to Contempt on the face of the Court (in facie curiae) and we cannot turn a blind eye to such flagrant contempt committed by PW4 before the Court.

23.For all the above reasons, we are prima facie satisfied that PW4 in facie curiae has made a false statement on oath and thereby, she has interfered in the administration of justice and hence, we are inclined to initiate Contempt proceedings against PW4.

24.We hereby call upon PW4 to explain as to why she must not be punished for Contempt of Court for having made false statements on oath and thereby, interfered with the administration of justice.

25.A separate notice will be sent to PW4 along with a copy of this order in order to enable P.W.4 to give her explanation and if she desires, to take legal assistance to defend herself."

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255. These two orders extracted supra are self-explanatory and we found that P.W-4, who was the most crucial witness in this case, had initially cooperated during the course of investigation and subsequently, she turned turtle. We found that this witness was openly uttering falsehood in Court and was not even willing to identify herself in the CCTV footage. We do not want to make any further observation about this witness since we are parallelly dealing with the Criminal Contempt initiated against this witness.

VIII. OTHER SUBMISSIONS MADE ON THE SIDE OF THE APPELLANTS

256. It was submitted that the entire case was driven by a parallel media trial and this has unfairly prejudiced the case of the accused.

257. When a sensational criminal case comes up for investigation before the Police or for adjudication in a subsequent trial before the Court, the usual question asked is "**Is the media expected to be a silent spectator ?".** The answer is certainly a definite "No". The only question is how far can the media go ?

258. It is the right of the public to know current information which is served by the print and electronic media. ***R.K.Anand's*** (***R.K. Anand v. Delhi High***

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Court) case reported in (2009) 8 SCC 106 and Jessica Lal murder case [***Manu Sharma v. State (NCT of Delhi)]*** reported in ***(2010) 6 SCC 1***, are cases coming under the category of positive instances of media activism. Press reporting can generate unwarranted publicity and sensationalism. The journalist's understanding of the system of administration of justice can be shallow and reporting of Court proceedings by incompetent or legally challenged reporters can result in garbled, distorted and misguided reports. Such report, far from doing any service to the administration of justice by ensuring the required publicity, can have counter productive impact and may even cause subversion of justice. A Judge should be able to decide the merits of a case objectively and in an atmosphere free from the cloud of profusion of public opinion.

259. So long as the duty of conducting trials in various jurisdictions and resolution of disputes stand exclusively earmarked for the judiciary in this country, it may not be desirable, in a democratic set up, for any other agency to arrogate to itself the role of the Courts and breed confusion and lawlessness in the mind of the unsuspecting public to the detriment of the judicial institutions, the curial processes followed therein and to the society at large. The individuals including the members of the judiciary who are subjected to calumny by the print and electronic media, have virtually no remedy since they cannot afford to fight

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the mighty media. Far from empowering the fourth estate to engage itself in such inquisitive ventures, the real need of the hour is to educate and enlighten the media with regard to the limitations on the freedom of speech and expression. Subject to the Constitutional and other statutory limitations, as far as possible, every agency should be able to operate in its own field without encroaching into the dominion earmarked for other agencies.

260. This Court must keep in mind the caution expressed by the Apex Court in ***Anukul Chandra Pradhan v. Union of India*** reported in ***1996 (6) SCC 354,*** wherein it was held as under:

> *"A note of caution may be appropriate. No occasion should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basis principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial. This requirement, undoubtedly has to be kept in view during the entire trial."*

261. In the instant case, it was A1 who was repeatedly using the media to create a favourable impression for himself as if a false case had been foisted against him and he was trying to prove it through the media. The facts of the

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present case fall under the category of "honour killing". Hence, there is nothing surprising for the media to have got into conducting parallel prosecution and parallel trial. This is a phenomenon which cannot be completely avoided in an era dominated by social media added to the traditional media and newspapers. The judges must be mature enough to rise to the occasion and shut themselves from the influence of media and go strictly by the procedure established by law. If the appellants/accused are complaining against the media, to a large extent, it is the own making of A1.

262. On going through the materials, it can be seen that the initial investigation that was conducted by DSP Vishnupriya and the initial trial that was conducted before the Special Court, Namakkal almost derailed the case of the prosecution till the CBCID took over the investigation and completed the same and this Court transferred the trial to the Special Court, Madurai. The pro-active role played by this Court ultimately placed this case on the right track and enabled a Special Public Prosecutor to conduct the trial. If not for the interference of this Court, injustice would have been caused and by now, justice would have been cremated and the accused persons involved in this case would be freely moving around after having committed a dastardly crime.

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263. On going through the entire deposition and the judgment passed by the Trial Court, it is impossible to accede to the submission of the appellants that the Trial Court was influenced by the media reports and the case was conducted and concluded strictly in accordance with law. Having adorned a Constitutional post, nothing should influence us either,and we can vouch for the fact that even during the course of Appeal, we ensured that the Rule of Law alone played its part in deciding this Appeal. Hence, we reject the contention that the case was influenced by media trial as was sought to be projected by the appellants/accused.

264. The learned counsel for the appellants/accused also pointed out to the questions that were put to the accused persons under Section 313(1)(b) of CrPC and submitted that the same was not focused on the incriminating evidence and the questions were running into several pages and thereby, the accused persons were denied an opportunity to give their explanation.

265. This Court must keep in mind the judgment of the Apex Court in ***Fainul Khan v. State of Jharkhand and another*** reported in ***(2019) 9 SCC 549,*** wherein it was held as follows:

> "***12.****Section 313 CrPC incorporates the principle of audi alteram partem. It provides an*

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opportunity to the accused for his defence by making him aware fully of the prosecution allegations against him and to answer the same in support of his innocence. The importance of the provision for a fair trial brooks no debate:

*"**313.Power to examine the accused.**—(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—*

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section."

But equally there cannot be a generalised presumption of prejudice to an accused merely by reason of any omission or inadequate questions put to an accused thereunder. Ultimately it will be a question to be considered in the facts and circumstances of each case including the nature of other evidence available, the kind of questions put to an accused, considered with anything further that the accused may state in his defence. In other words, there will have to be a cumulative balancing

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> *of several factors. While the rights of an accused to a fair trial are undoubtedly important, the rights of the victim and the society at large for correction of deviant behaviour cannot be made subservient to the rights of an accused by placing the latter at a pedestal higher than necessary for a fair trial."*

266. It is clear from the above that a Court must make a cumulative balancing of several factors and deal with the issue considering the facts and circumstances of each case. Keeping this in mind, we do not find that the accused persons were put to any grave prejudice in this case and they had the opportunity to answer the incriminating evidence that was put against them. It is true that the Trial Court could have formulated Section 313 Cr.PC questions in a better manner, but however, that by itself does not warrant the interference of this Court since this Court holds that the accused persons had a fair opportunity, on the overall facts and circumstances of the present case.

267. During the course of arguments, for the first time, the learned counsel for the appellants/accused questioned the expertise of the scientific experts viz., P.W-52, P.W-75, P.W-79 and P.W-93. In our considered view, no questions were put to these experts to test their expertise when they were in the witness box and such a defence cannot be raised for the first time before this Court. That apart, we have looked at the qualification and the designation held

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by these experts during the relevant point of time and also the answers given by them during the course of trial and we find that they have satisfied the requirements of Section 293(4)(e) of CrPC and the legal presumption under Section 114(e) of the Indian Evidence Act, 1872. In view of the same, we reject the contention questioning the expertise of these witnesses at the stage of appeal.

268. Yet another contention that was put forth by the learned counsel for the appellants/accused was that the Trial Judge on atleast 18 occasions recorded the objections raised by the defence during the course of trial and stated that the objections will be decided at the time of rendering judgment and ultimately, those objections were never answered till the end. The Trial Judge, while recording the objections, is expected to answer those objections either at the time when the objection is raised or atleast when the judgment is delivered. Unfortunately, the Trial Judge did not choose to answer the objections raised by the defence. But that by itself cannot be a ground to hold that the Trial Court had committed a manifest illegality. In our considered opinion that would be going too far.

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269. However, we only notice the latest judgment of the Supreme Court ***In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials*** (Suo Motu WP Cri No 1 of 2017 dated 20.04.2021) wherein it is stated as under:

> *"The presiding officer therefore, should decide objections to questions, during the course of the proceeding, or failing it at the end of the deposition of the concerned witness. This will result in de- cluttering the record, and, what is more, also have a salutary effect of preventing frivolous objections. In given cases, if the court is of the opinion that repeated objections have been taken, the remedy of costs, depending on the nature of obstruction, and the proclivity of the line of questioning, may be resorted to. Accordingly, the practice mandated in Bipin Shantilal Panchal shall stand modified in the above terms."*

Thus, the decision in ***Bipin Shantilal Panchal (2001) 3 SCC 1*** stood modified only in so far as objections regarding questions put to a witness. The earlier rule regarding objections pertaining to marking of documents etc would still be governed by the Bipin Shantilal Panchal rule.

270. This Court makes it abundantly clear that the procedure which has already come into force pursuant to notifying the changes suggested by the Apex

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Court in the Criminal Rules of Practice, must be strictly complied with in all future cases by the Trial Court. The Judicial Academy must ensure that the judicial officers are made aware of the procedure that has been brought into force in the Criminal Rules of Practice pursuant to the directions issued by the Apex Court.

IX. RE: APPEALS AGAINST ACQUITTAL AND THE APPEAL SEEKING ENHANCEMENT OF SENTENCE

271. The learned Special Public Prosecutor addressed us on why A4 to A7 and A15 are also liable to be convicted and sentenced, as also with regard to those charges from which A1 to A3 and A8 to A14 were acquitted.

272. The learned Special Public Prosecutor further sought for enhancement of the sentence and to impose the maximum sentence of death on the accused persons, considering the fact that it was a clear case of "honour killing" and such outrageous and uncivilised behaviour can be kept under check only if they are sent to the gallows.

273. Insofar as A4 to A7 are concerned, the learned Special Public Prosecutor brought to our notice the evidence of P.W-30, P.W-41, P.W-32 and P.W-34. The learned Special Public Prosecutor also drew our attention to Ex.P-92,

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Ex.P-93, Ex.P-203, Ex.P-531 to Ex.P-533, Ex.P-536 and Ex.P-395. The learned counsel mainly focused his attention on the mobile devices that were recovered from these accused persons and the tower location spoken to by the service provider and thereby, wanted this Court to interfere with the findings of the Trial Court and convict these accused persons also.

274. A judgment/order of acquittal passed by the Trial Court affirms the basic presumption of innocence in favour of the accused persons. A judgment/ order of acquittal will be interfered only when there is a glaring infirmity in the appraisal of evidence or the finding of the Trial Court is perverse or arbitrary. Once the Trial Court, on assessing the materials, acquits the accused persons and if it is a "possible view", the same cannot be reversed in an appeal filed against acquittal. The law on this issue is too well settled and this Court must bear this in mind while dealing with the appeal filed by the prosecution against the acquittal of A4 to A7 and A15.

275. The Trial Court, while appreciating the evidence, has taken the following factors into consideration:

a. Insofar as A4 is concerned, he is alleged to have joined with A1 and others at Konganapuram on 23.06.2015 at about 02.15 p.m. and

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thereafter, left and once again joined the accused persons near the railway track. The Trial Court took into consideration the mobile phone that was recovered from A4 (M.O.59) and also the evidence of P.W-57.

b. Insofar as A5 is concerned, he is also alleged to have joined with the other accused persons at Konganapuram and he went along with A1 to the sticker shop belonging to one Ramesh and thereafter, accompanied the accused persons to the railway track. No mobile phone was recovered from A5 and the mobile number that is said to have used by A5 was tested in the light of the evidence of P.W-70.

c. Insofar as A6 is concerned, he is also alleged to have joined the other accused persons at Konganapuram and accompanied them to the railway track. The Trial Court took into consideration the evidence of P.W-12 and also Ex.P13. The Trial Court also took into account the evidence of P.W-101, who was the nodal officer of Airtel.

d. Insofar as A7 is concerned, he is the brother of A1 and he is said to have met one Senthil and received the Apple mobile phone of A1 from this person and is said to have participated in the conspiracy. The Trial Court, while dealing with this accused, has taken into consideration the evidence of P.W-32. The Trial Court also took into consideration the fact that P.W-14, P.W-19, P.W-22 and P.W-38 turning hostile.

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276. On an overall appreciation of evidence that was put against A4 to A7, the Trial Court came to a conclusion that the prosecution did not prove the case or substantiate the charges against these accused persons. On carefully going through the discussion made by the Trial Court from paragraphs 41 to 48, we find that the Trial Court has considered the evidence available in detail and has rendered a finding. The finding rendered by the Trial Court does not suffer from any perversity or arbitrariness and it is certainly a "possible view" taken by the Trial Court, which does not require any interference by this Court in the appeal filed against acquittal of A4 to A7.

277. Insofar as A15 is concerned, he is said to have helped A1 when he was absconding and failed to inform the police about the whereabouts of A1. The only evidence that was put against this accused person was the mobile phone recovered and marked as M.O.65 through P.W-102. P.W-79, who is a scientific analyst has stated in the report marked as Ex.P-248 that the mobile phone only contained some recordings between the family members of A15 and some prayer songs and other photos. The Trial Court found that there was absolutely no evidence to connect A15 with A1 from 23.06.2015 onwards. This finding rendered by the Trial Court does not suffer from any perversity and it does not warrant the interference of this Court.

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278. In the light of the above discussion, we hold that the acquittal of A4 to A7 and A15 from all charges does not warrant the interference of this Court.

279. A1 to A3 and A8 to A14 were acquitted from certain charges as tabulated below:

Sl. No	Rank of the accused	Charges from which acquitted
1.	A1	S. 384, 465, 468, 471 and 201 (two counts) IPC.
2.	A2	S.384 r/w 149, 465, 468, 471 and 302 r/w 149 IPC, S. 3(2)(v) of the SC/ST Act r/w S.149 IPC, S. 201 r/w S.149 of IPC and S.201 of IPC.
3.	A3	S.384 r/w 149, 465, 468, 471 and 302 r/w 149 IPC, S. 3(2)(v) of the SC/ST Act r/w S.149 IPC, S. 201 r/w S.149 of IPC and S.201 of IPC.
5.	A8	S.384 r/w 120B, S.465 r/w 120B, S.468 r/w 120B, S.471 r/w 120B and S. 201 r/w 120B IPC.
6.	A9	S.384 r/w 120B, S.465 r/w 120B, S.468 r/w 120B, S.471 r/w 120B and S. 201 r/w 120B IPC.
7.	A10	S.384 r/w 120B, S.465 r/w 120B, S.468 r/w 120B, S.471 r/w 120B and S. 201 r/w 120B IPC.

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8.	A11	S.384 r/w 120B, S.465 r/w 120B, S.468 r/w 120B, S.471 r/w 120B and S. 201 r/w 120B IPC.
9.	A12	S.364 r/w 120B IPC, S.3(2)(v) of SC/ST Act r/w S.120B of IPC, S.384 r/w 120B, S.465 r/w 120B, S.468 r/w 120B, S.471 r/w 120B and S. 201 r/w 120B IPC.
10.	A13	S.364 r/w 120B IPC, S.3(2)(v) of SC/ST Act r/w S.120B of IPC, S.384 r/w 120B, S.465 r/w 120B, S.468 r/w 120B, S.471 r/w 120B and S. 201 r/w 120B IPC.
11.	A14	S.364 r/w 120B IPC, S.3(2)(v) of SC/ST Act r/w S.120B of IPC, S.384 r/w 120B, S.465 r/w 120B, S.468 r/w 120B, S.471 r/w 120B and S. 201 r/w 120B IPC.

280. The Trial Court has acquitted A1 to A3 and A8 to A14 from the charges of extortion, forgery, criminal conspiracy for committing these offences and also criminal conspiracy for committing the offence of screening the offender and for causing disappearance of evidence in respect of an offence. While acquitting the accused persons from certain charges as detailed supra, the Trial Court has made a meticulous analysis based on the appreciation of the available evidence and has given detailed reasoning from paragraphs 71 to 81 of the judgment. We find that the reasoning given by the Trial Court for acquitting the accused persons from these charges, to be a "possible view" based on oral and

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documentary evidence and the same does not warrant the interference of this Court in the appeal filed against the acquittal from those charges.

281. The last limb to be dealt with under this heading is as regards the enhancement of punishment sought for against the accused persons. It is true that the instant case involves "honour killing". The Apex Court in ***Bhagwan Dass v. State (NCT of Delhi)*** reported in ***(2011) 6 SCC 396*** has held as follows:

> *"In our opinion honour killings, for whatever reason, come within the category of the rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilised behaviour. All persons who are planning to perpetrate "honour" killings should know that the gallows await them."*

282. The Supreme Court even in subsequent judgments has held that the practice of khap panchayat must be dealt with iron hands. In view of the same, it was contended that the facts of the present case warrant imposition of death sentence against the accused persons.

283. The instant case is purely based on circumstantial evidence. The Trial Court has taken into consideration the fact that A2, A8, A9, A10 and A14 were all

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aged about 20-30 years and A1, A3, A11 and A13 were all aged about 30-35 years. A12 was aged about 44 years. There was no previous enmity or any pre-meditation for the accused persons against the deceased. They were all under the influence of a demon called as "caste". On balancing between the mitigating and aggravating circumstances, the Trial Court thought it fit to impose the sentence of imprisonment for the rest of the life of the accused persons without entitlement for remission, as the appropriate sentence to be imposed against the accused persons. While doing so, the Trial Court has drawn inspiration from the judgments of the Apex Court in ***Swamy Shraddananda (2) v. State of Karnataka*** reported in ***(2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113*** and ***Hari and Another v. State of Uttar Pradesh*** reported in ***2021 SCC on line SC 1131.***

284. In our considered view, in the overall facts and circumstances of the case the sentence of life imprisonment, as against A1 to A3 and A8 to A12, for the rest of the convicts life without entitlement for remission was an appropriate sentence imposed by the Trial Court and the same does not require the interference of this Court.

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X. THE APPEALS OF A13 AND A14

285. A13 and A14 were roped in as accused persons mainly on the ground that they helped in harbouring A1 after knowing fully well that A1 was involved in a serious offence. Hence, the main charge against A13 and A14 was under Sections 212 and 216 of the IPC. These accused persons are alleged to have harboured the offender with the intention of shielding him from the clutches of the law.

286. Insofar as A13 is concerned, the Trial Court found that he had illegally given protection to A1 till 11.10.2015 i.e. till A1 surrendered. His mobile phones (M.O.61 and M.O.62) were recovered under seizure mahazar marked as Ex.P-108 and were subjected to scientific analysis by P.W-79 and in the report marked as Ex.P-248, it was found that his mobile phone contained picture files regarding the murder of deceased Gokulraj and abscondence of A1. That apart, a sum of Rs.14,000/- was also recovered from A13, which was received by him from A1. Thus, the Trial Court concluded that A13 had knowingly harboured A1 and had intentionally screened him from the law enforcement agencies knowing fully well that A1 had committed an offence.

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287. Insofar as A14 is concerned, his mobile phones (M.O.63 and M.O.64) were recovered under seizure mahazar marked as Ex.P-109. This witness had helped A1 in giving an interview to P.W-33, when A1 was absconding. P.W-33 perfectly identified A14 in the Court. A14 had taken P.W-33 in a two wheeler to a grove where A1 met P.W-33 and gave an interview. This interview was telecasted on 04.10.2015 in Puthiya Thalaimurai news channel. That apart, the report given by P.W-79 and which was marked as Ex.P-248 after analysing the mobile phone of A14, shows that it contained the photos of A1 and the news items about A1.

288. In our considered view, the findings of the Trial Court as against A13 and A14 is based on proper appreciation of evidence and the charges against A13 and A14 for offences under Sections 212 and 216 of IPC have been clearly and cogently made out. Thus, we find no ground to interfere with the findings of the trial court on these charges.

289. The Trial Court, apart from convicting A13 and A14 for charges under Sections 212 and 216 of IPC, has also convicted and sentenced them for offence under Section 120B r/w 302 IPC r/w Section 3(2)(v) of the SC & ST Act. In our considered view, there is absolutely no justification for convicting A13 and A14 for these offences. Admittedly, A13 and A14 had come into the scene only after

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the offence was committed by the other accused persons. The charge of conspiracy as against A13 and A14 cannot be sustained once the offence has been committed. These two accused persons were never in the scene right from Ardhanareeshwarar temple till the final gruesome act that took place in the railway track. In view of the same, Section 10 of the Evidence Act cannot be pressed into service as against A13 and A14 to make them a part of the conspiracy.

290. In the light of the above discussion, A13 and A14 are entitled to be acquitted from the charge of Section 120B IPC r/w 302 IPC r/w S 3(2)(v) of the SC & ST Act. The conviction and sentence can be sustained as against A13 and A14 only for the charges under Sections 212 and 216 IPC.

XI. MODIFICATIONS IN RESPECT OF A1 to A3 & A8 to A12

291. A1 has been convicted under Section 302 IPC simpliciter r/w Section 3(2)(v) of the SC & ST Act. There is no reason to independently convict and sentence A1 for offence under Section 302 IPC simpliciter. It is not the case of the prosecution that A1 alone had fatally attacked the deceased Gokulraj. On the other hand, the offence was committed by A1 along with the other accused persons viz., A2, A3, A8 to A12. Hence, A1 to A3 and A8 to A12 are liable to be

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convicted for offence under Section 302 IPC r/w Section 120B IPC r/w Section 3(2)(v) of the SC & ST Act and are liable to be sentenced to undergo life imprisonment for the rest of their lives without entitlement for remission and to pay a fine of Rs.5,000/- and in default thereof, to undergo three years Rigorous Imprisonment.

292. A12 was involved in the conspiracy along with the other accused persons and he did his part of the conspiracy by actively taking away P.W-4 from the Ardhanareeshwarar temple along with his wife. Even if A12 had not ultimately participated in the actual commission of murder, he must also be convicted for the offence of murder in the light of the fact that he was an active conspirator who had played his role in the crime.

293. The Trial Court, after having convicted A1 to A3 and A8 to A12 for the offence of criminal conspiracy under Section 120B IPC, ought to have convicted these accused persons for offence under Section 302 IPC also since the charge was one of conspiracy to commit murder and this Court has already given a finding that the prosecution has proved the charge of murder beyond reasonable doubt. To that extent, the conviction and sentence against A1 to A3 and A8 to A12 requires modification. Such modification is permissible under

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Section 386 (1)(b)(iii) Cr.P.C provided the overall sentence is not enhanced. The power of the appellate court to modify the finding of guilt from one section to another has been recognised in ***R. Janakiraman v State*** (2006) 1 SCC 697.

294. The conviction and sentences imposed on the accused persons viz., A1 to A3 and A8 to A14 will stand modified in the following manner:

Sl. No.	Rank of the accused	Offence under which convicted	Sentence/ Punishment
1.	A1 to A3 and A8 to A12	Section 120B IPC r/w 302 IPC r/w Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.	Life Imprisonment for the rest of their lives without entitlement for remission and a fine of Rs.5,000/-, in default, to undergo three years Rigorous Imprisonment.
2.	A1 to A3 and A8 to A12	Section 302 IPC r/w Section 120B IPC r/w Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.	Life Imprisonment for the rest of their lives without entitlement for remission and a fine of Rs.5,000/-, in default, to undergo three years Rigorous Imprisonment.
3.	A1 to A3 and A8 to A11	Section 364 IPC r/w Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.	Life Imprisonment and a fine of Rs.5,000/-, in default, to undergo three years Rigorous Imprisonment.
4.	A13 and A14	Section 212 IPC	Five years Rigorous Imprisonment and a fine of Rs.5,000/-, in default, to undergo one year Rigorous Imprisonment.
5.	A13 and A14	Section 216 IPC	Five years Rigorous Imprisonment and a fine of Rs.5,000/-, in default, to undergo one year Rigorous Imprisonment.

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295. The above sentences shall run concurrently.

XII. FINAL CONCLUSIONS

296. In the light of the above discussion our final conclusions are as under:

- **Criminal Appeal Nos.228, 230, 233 of 2022** filed by A1-A3, A8-12 will stand **dismissed with the modification** made in paragraphs 293 and 294, supra.
- **Criminal Appeal No.232 of 2022** filed by A13 and A14 is **partly allowed**. The conviction of A13 and A14 for the charges under Section 120B IPC r/w 302 IPC r/w S 3(2)(v) of the SC & ST Act are set aside. The conviction and sentence imposed on A13 and A14 under Section 212 and 216 IPC stands confirmed.
- **Criminal Appeal No. 536 of 2022** filed by the State shall stand **dismissed**.
- **Criminal Appeal Nos. 515 and 747 of 2022** filed by the victim will also stand **dismissed**.

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297.This passage from the Judgement of the Apex Court fits like a mink glove to the case on hand. In ***Hemudan Nanbha Gadhvi v. State of Gujarat, (2019) 17 SCC 523 : (2020) 3 SCC (Cri) 400 : 2018 SCC OnLine SC 1688*** at page 529, the Apex Court reminds all criminal courts with these strong words thus :

> *"10. A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor can the victim be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses to turn hostile as a ground for acquittal, as observed in Zahira Habibullah Sheikh v. State of Gujarat [Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] and Mahila Vinod Kumari v. State of M.P. [Mahila Vinod Kumari v. State of M.P.,(2008) 8 SCC 34 : (2008) 3 SCC (Cri) 414]"*

298. Before we draw the curtains, we wish to place our appreciation to all

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the counsels who appeared on either side and enlightened us on the facts and law. Right through the proceedings, we ensured that we were not swayed by any opinions expressed by the media and we were conscious that moral conviction regarding the guilt of the accused persons had no place in criminal jurisprudence and we made all attempts to get into the truth only based on the evidence that was placed before us.

[M.S.R.,J..] [N.A.V., J.]
02.06.2023

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Index : Yes/No
Internet : Yes
Neutral Citation: Yes/No
KP
To
1.III Additional District and Sessions Judge,
[Special Court for SC/ST Act Cases (PCR)]
Madurai.

2. The Additional Superintendent of Police
CBCID, Namakkal District.

3.The Inspector of Police
CBCID, Namakkal District.

4.The Superintendent,
Central Prison, Coimbatore.

5.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

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M.S.RAMESH, J.
AND
N.ANAND VENKATESH, J.

KP

Pre-Delivery Common Judgment in
Crl.A.(MD).Nos.228, 230, 232, 233,
515, 536 and 747 of 2022

02.06.2023

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