A JOHN PANDIAN

v.

STATE REP. BY INSPECTOR OF POLICE, T. NADU

(Criminal Appeal No. 452 of 2007)

DECEMBER 3, 2010

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[V.S. SIRPURKAR AND CYRIAC JOSEPH, JJ.]

Penal Code, 1860:

C *s.302 r/w s.34, s.302 r/w s.109, ss. 34 and 120-B – Homicidal death – Allegations of criminal conspiracy – Prosecution case that A-1, owing to his failure in marrying a girl he loved, hatched a conspiracy to kill her husband, for which A-9, 10 and A-11 were hired as assassins – A-10 and A-11* D *allegedly waylaid the deceased pursuant to which A-9 severely assaulted him with a sharp edged weapon – Eleven accused – Two accused, A-3 and A-8, acquitted – Conviction of the other accused – Challenge to – Meanwhile, A-1 committed suicide – Held: Conviction of A-9, 10 and 11 affirmed in view of the* E *consistent direct evidence of the eye-witnesses which was corroborated by the evidence of Test Identification Parade and circumstantial evidence – However, it is not possible to hold that the acts done by A-2, A-4, A-5, A-6 and A-7 along with A-1 and the subsequent act on the part of A-9, A-10 and A-11 formed a chain of circumstances which irresistibly proved the* F *offence of conspiracy against A-2, 4, 5, 6 and 7 – Prosecution was extremely confused as to how much money was agreed to be paid for the murder and as to how much money was distributed – All these things completely shatter the case of conspiracy at least in so far as A-2, 4, 5, 6 and 7 are concerned* G *– They have to be given the benefit of doubt for that purpose and are acquitted.*

s.302 r/w s.34 – Murder – Allegation that A-10 and A-11 had stopped the deceased whereafter A-9 severely assaulted

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the deceased with a sharp weapon – Three eye-witnesses – Conviction of A-9, A-10 and A-11 – Justification – Held: Justified – All the three witnesses gave graphic description of the incident, which was in consonance with each other – They also identified the accused persons in Test Identification Parade, which had the effect of corroborating the evidence of the eye-witnesses – Further corroboration from circumstantial evidence such as discovery of the weapon of offence at the instance of A-9 and recovery of the photograph of deceased from the taxi in which A-9, A-10 and A-11 travelled prior to the incident – Evidence against A-9, A-10 and A-11 was sufficient – Trial and the appellate Courts rightly convicted them.

s.120B – Conspiracy – Proof of – Held: The evidence of conspiracy is very hard to be found and the prosecution would always have a great difficulty in proving the conspiracy and, therefore, the conspiracy has to be inferred – Every such circumstance, which is relied upon by the prosecution for establishing conspiracy, must be proved to have nexus with that conspiracy – Evidence – Evidence of conspiracy.

s.120-B and s.302 r/w s.109 – Murder – Criminal conspiracy – Eleven accused:

Conviction of A-7, a political leader, as a co-conspirator – Justification – Held: Not justified – The evidence against A-7 was insufficient – No effort was made by the prosecution to identify A-7 though he could have been easily identified –A-7 granted benefit of doubt.

Conviction of A-5 – Justification of – Held: Not justified – Held: There was hardly any evidence against A-5 which can brand him as a conspirator – He was never put up for identification –A-5 had no enmity with the deceased – Merely because he travelled along with some of the other accused not enough to prove any part of the conspiracy – The travels could have been for various other reasons – He, therefore, deserves acquittal.

A *Conviction of A-6 – Justification – Held: Not justified – No presumption that merely because A-6 had some things in his possession, which he failed to explain, therefore, all this must have come only on account of the money that he had allegedly received as a member of the conspiracy – This evidence not* B *enough to hold that he was a member of the conspiracy – A-6 therefore entitled to benefit of doubt.*

Conviction of A-4 – Justification – Held: Not justified – In the absence of any convincing evidence, merely because A-4 travelled together with other accused and stayed in two Hotels, C *it cannot be said that it was in order to perpetrate a conspiracy – Nothing brought on record suggesting that the money recovered from him was paid to him as part of the conspiracy – A-4, therefore, given the benefit of doubt.*

D *A-2, office boy of the main accused A-1, found carrying large sum of money – Conviction of A-2 – Justification – Held: Not justified – A-2 had not been identified by anybody – Mere recovery of money would be of no consequence unless the prosecution comes out with a case and give some prima facie* E *evidence that this cash was a part of the money that he had received from A-1 and that too for the purpose of success of conspiracy – The prosecution did not discharge that burden – It is unlikely that a rich and powerful person like A-1 would take the help of some office boy in such a sensitive matter where* F *murder of a person was contemplated – This is the basic weakness in the prosecution case – Nothing to show that there was any meeting of mind between A-1 and A-2 or that A-2 agreed to take part in the conspiracy – No inference can be drawn that A-2 was a conspirator.*

G *Constitution of India, 1950 – Article 136 – Criminal trial – Appreciation of evidence by trial court and appellate court – Re-appreciation of evidence at SLP stage – Permissibility of – Held: Normally, once the evidence is accepted by the trial and the appellate Court, the Supreme Court does not go into* H *the exercise of re-appreciation unless it is shown that the*

appreciation of evidence by trial and appellate Court is perverse, not at all acceptable to trained judicial mind or so faulty as to require the inference of the Supreme Court or that the trial and appellate Court have relied on some inadmissible piece of evidence or have left out of the consideration some evidence which they were bound to consider and appreciate.

Evidence – Evidence of Identification Parade – Held: Need not be viewed as a weak type of evidence.

According to the prosecution, A-1, owing to his failure in marrying PW-3, hatched a conspiracy along with other accused to eliminate PW3's husband; that A-2, an employee of A-1, helped A-1 in establishing contacts with A-4, A-5 and A-6; that thereafter A-2, A-4, A-5 and A-6 established contact with A-7 (a political leader) who in turn hired A-9, A-10 and A-11 as assassins; and that A-9, A-10 and A-11 hired a car (driven by A-8) and assaulted PW3's husband mercilessly with *veechu aruval* (a weapon with handle and with bent sharp blade) and murdered him on the spot. The incident was allegedly seen by PW-14, PW-15 and PW-16. The victim suffered 9 cut injuries on vulnerable parts of his body like his shoulder, neck, right cheek, occipital region etc. The murder took place on a busy road of Coimbatore in broad daylight.

The trial Court convicted A-9, A-10 and A-11 under s.302, IPC read with s.34, IPC. A-1, A-2, A-4, A-5, A-6, A-7, A-8, A-9, A-10 and A-11 were convicted under Section 120B, IPC. A-1, A-2, A-4, A-5, A-6, A-7 and A-8 were also convicted for offence under Section 302, IPC read with Section 109, IPC. The trial Court acquitted A-3. No appeal against his acquittal was filed by the State. The convicted accused filed appeals before the High Court. The appeal filed by A-8 was allowed and he was acquitted. The appeals of the remaining convicts were dismissed. During the pendency of this appeal, A-1 committed suicide. The instant appeals were filed by A-2, A-4, A-5, A-6, A-7, A-9, A-10 and A-11.

A Disposing of the appeals, the Court

HELD:1. Peculiarly, in this case the accused-appellants can be divided into two groups. The first group is A-9, A-10 and A-11 who were involved by the direct ocular testimony and were also part of the conspiracy to murder PW3's husband. The second group is that of the accused persons being A-2, A-4, A-5 and A-6 and A-7 who are roped in as the conspirators. There is, however, no direct evidence against them insofar as the act of assault on deceased is concerned. This Court, therefore, proposes to consider the matter group-wise. [Paras 19 and 20] [1038-C-F]

A-9, A-10 and A-11

2.1. Normally, once the evidence is accepted by the trial and the appellate Court, the Supreme Court does not go into the exercise of re-appreciation unless it is shown that the appreciation of evidence by trial and appellate Court is perverse, not at all acceptable to trained judicial mind or so faulty as to require the inference of the Supreme Court or that the trial and appellate Court have relied on some inadmissible piece of evidence or have left out of the consideration some evidence which they were bound to consider and appreciate. [Para 20] [1038-G-H; 1039-A-B]

2.2. In the present case, the evidence against the three accused A-9, A-10 and A-11 basically consists of the eye-witness account by PW-14, PW-15 and PW-16. All the three witnesses gave graphic description of the incident. All of them have asserted that A-10 and A-11 stopped the deceased and A-9 started severely assaulting the deceased. Insofar as role played by these accused persons is concerned, the evidence of all the three eye-witnesses is in consonance with each other and there does not appear to be any reason to discard their evidence.

The trial and the appellate Courts are right in accepting their evidence as truthful. [Paras 21, 27] [1039-C-D; 1045-E-F]

2.3. All the three eye-witnesses have been corroborated by the fact that in the Test Identification Parade, they identified the accused persons. The trial and the appellate Courts rightly accepted the evidence of Test Identification Parade, which has the effect of corroborating the evidence of the three eye-witnesses. The evidence of Identification Parade need not be viewed as a weak type of evidence. The said three eye-witnesses had the full opportunity to see the accused persons and correctly identified the accused persons in the Test Identification Parades. As regards the contention that the accused persons were shown to the witnesses earlier and irresponsible suggestions were also thrown to the witnesses that they had seen the photograph of the accused persons in the newspaper, the defence has not brought on record any such newspaper where the photographs of the accused persons were published. In fact, the eye-witnesses' account supported with by the evidence of Test Identification Parades is more than enough to seal the fate of A-9, A-10 and A-11. [Paras 28, 29] [1045-C; 1046-A-B-G-H; 1047-A]

2.4. Some other circumstances, however, were brought on record by way of circumstantial evidence against the three accused persons. The most important of these circumstances is the discovery of *aruval* effected at the instance of A-9 from Hindu cremation ground. The prosecution has brought on record that the taxi No. TAC 5667 which was being driven by A-8 had passed through Ooty. The prosecution examined PW-44 and PW-43 to prove that the taxi passed through the check post. There is nothing to disbelieve this fact. Therefore, this fact must be accepted that taxi did pass twice through Ooty. This

A circumstance has been accepted by both the Courts below. It is, therefore, proved that this taxi was in Ooty on 16.8.93. It cannot be disputed that this was the taxi used by three accused persons to travel from Tirunelveli to Coimbatore. There is the evidence led by PW-44 to prove B that the accused persons stayed in the night of 16-17/8/93 at Hotel Arthi Lodge, Ooty. It cannot be a co-incidence alone that the full name of the accused with his address in Tirunelveli should find place in the register of Arthi Lodge. This circumstance also has been accepted by the C trial Court and appellate Court and there is no reason to take a different view. The other circumstance against A-9 is the evidence of PW-50 who was a Scientific Officer. He examined M.O.20 which was a colour photograph of deceased which was found from the taxi in its search. He D matched M.O.20 with M.O.17 which was a colour photo of PW3. He asserted that item Nos.1 and 2 which were the photographs of a male and a female matched with each other and that they were both the cut pieces of one photograph, the colour factor in both the photographs was identical, the rear side of the photograph was E matching and he, therefore, opined that items Nos.1 and 2 were the parts of one and the same photograph. The photograph of PW3 was found from the possession of A-1 while the photograph of deceased was found from the taxi in which A-9, A-10 and A-11 travelled. Once it was F proved that the photograph was lying under the back seat of the taxi, the relevance of the taxi and the accused having travelled in the same becomes all the more prominent. [Paras 30, 34 and 35] [1047-C; 1049-H; 1050-A-C; G-H; 1051-A-D; 1052-C]

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2.5. There is sufficient evidence against A-9, A-10 and A-11 and the trial and the appellate Courts have correctly convicted them for the offence under Section 302 in case of A-9 and others with the aid of Section 34 IPC. [Para 36] H [1053-E-F]

State of Uttar Pradesh v. Boota Singh & Ors. **1979 (1) SCC 31 – relied on.**

State of Himachal Pradesh v. Jeet Singh **1999 (4) SCC 370 – referred to.**

A-2, A-4, A-5, A-6, A-7

3.1. Inspite of the concurrent judgment of the trial and the appellate Court in this case against A-2, 4, 5, 6, and 7, this Court had to consider the evidence afresh as it is not satisfied with the appreciation of the evidence at the trial and appellate stage. The Courts below committed an error in first holding the existence of conspiracy and proceeding on that basis and then taking tit-bits in evidence to suggest that those tit-bits would connect the accused with the conspiracy as the conspirators. [Para 55] [1076-D-E]

3.2. The evidence of conspiracy is very hard to be found and the prosecution would always have a great difficulty in proving the conspiracy and, therefore, the conspiracy has to be inferred. There can be no doubt that there was a conspiracy to eliminate PW3's husband from the scene and from this world. However, again the question remains as to whether there is sufficient evidence to connect A-7 with the conspiracy itself. One must realize that if no connection is established with A-7 excepting for a few phone calls from Ukkadam to his house and the fact of A-2, A-4, A-5, A-6 travelling from Coimbatore to Madurai and from Chennai to Coimbatore it does not connect A-7 successfully. Further no effort has been made by the prosecution to identify A-7. He could have easily been identified by the staff at MLA's hostel. For some mysterious reasons that was not done. There could have been some evidence to suggest that he had some nexus with A-9, A-10 and A-11. Even the evidence in that behalf is far from being satisfactory. Under these circumstances, even if the trial Court and the High Court have found A-7

A to be a conspirator it will be extremely difficult to hold him so. Therefore, he is granted benefit of doubt. [Para 47] [1066-H; 1067-A-E]

3.3. There is hardly any evidence against A-5 which can brand him as a conspirator. This accused, like the B other friends of him like A-2, A-4 and A-6 was never put up for identification. If the prosecution alleged that he stayed at the Sri Jankiram Hotel or Blue Star Hotel, he could have been got identified by the staff of those hotels. That was not done. The travels, even if accepted, do not connect C him with the conspiracy at all as it could be for any purpose. This is apart from the fact that no attempt was made to identify him even by the railway staff of the train in which he travelled. All that he has said is that A-2, A-5 and A-6 used to go the STD booth and make calls. There is nothing D suspicious about that. After all there could have been hundred other reasons to make calls. It is difficult to see any role much less important role being played by this accused in furtherance of conspiracy excepting the fact that he moved along with other accused persons. There E is nothing to suggest that he had any nexus with the so-called conspiracy for eliminating PW3's husband. He had no enmity with the deceased. These travels along with the accused cannot be said to be the links or prove any part of the conspiracy alone. His travels could have been for F various other reasons. This Court does not approve of the finding of the trial Court and the appellate court that on the basis of this evidence this accused could be roped in the conspiracy. This Court is not at all impressed by the prosecution case. He, therefore, deserves acquittal. [Para G 48] [1067-F-H; 1068-A-H; 1069-A-B]

3.4. As regards the case of A-6, again, his participation in the conspiracy is tried to be proved from the railway travels and also by witnesses PW-20, and PW-21. Merely because there are some discoveries they do not in any H

manner connect the accused and there is no presumption that merely because the accused has some things in his possession, which he fails to explain, therefore, all this money and the gold chain must have come only on account of the money that he had allegedly received as a member of the conspiracy from A-2. This evidence would fall short to hold that he was a member of the conspiracy. This may, at the most, raise suspicion against him but that would be completely without any justification. This accused would, therefore, has to be given the benefit of doubt. [Para 49] [1069-C-D; 1070-E-G]

3.5. The established law is that every such circumstance, which is relied upon by the prosecution for establishing conspiracy, must be proved to have nexus with that conspiracy. In the absence of any convincing evidence, merely because A-4 travelled together with others and he stayed in those two Hotels, it cannot be said that it was in order to perpetrate a conspiracy. In the absence of his identification, even if these handwritings go to prove his presence, that may, at the most, raise a suspicion against the accused, which in is not sufficient. He is said to have discovered a Titan watch vide M.O. 11 and cash vide M.O. 12. However, it is not seen as to how any of these material objects can be connected with the conspiracy. No evidence has been brought on record to suggest that he could not have Rs.23,000/-. The evidence of discovery is again a weak kind of evidence and this Court, on a number of occasions, has refused to rely solely on the discovery evidence. There is nothing brought on record suggesting that these 23,000 of rupees were paid to him by A-1 via A-2. There is no connection established in between him and A-7 or for that matter, A-9, A-10 and A-11. In the absence of all these materials, it will be extremely risky to convict him on the basis of his being a conspirator. He is given benefit of doubt. [Para 52] [1073-C-H; 1074-A]

A 3.6. There can be no doubt that A-2 was connected with A-1 as he was an office boy. He was asked to get a cheque of Rs.3 lakhs encashed from Lakshmi Vilas Bank, Thirupur Branch. However, in his going and encashing the self-cheque, this Court does not see anything B suspicious, as it was his duty as an office boy to do whatever errands were asked by his master to him. This accused had not been identified by anybody. Mere recovery of money would be of no consequence unless the prosecution comes out with a case and give some C *prima facie* evidence that this cash was a part of the money that he had received after encashing the cheque. In fact, there is nothing to suggest that he had not given back the cash. Though this accused should have given some explanation about this cash, however, that would be only if it was shown that this accused received this cash from D A-1 and that too for the purpose of success of conspiracy. The prosecution has not discharged that burden. A-1 was a mill-owner and was a fabulously rich person. He had all the resources at his command. It is very difficult to swallow that a powerful person like A-1 would take the help of E some office boy in such a sensitive matter as his, where the elimination of deceased was contemplated. This is the basic weakness in the prosecution case. A-1 would have had number of opportunities to contact or to secure the services of A-7 even if it is presumed that it was A-7 who F procured the services of A-9, A-10 and A-11. Nothing has come up that there was any meeting of mind between A-1 and A-2 or that A-2 agreed to take part in the conspiracy. Such agreement is a must for proving his part in the conspiracy. Further, there is nothing to suggest that A-2 G was so resourceful, so as to be able to secure the services of A-7. He was a mere office boy. There is no doubt that there was a conspiracy to eliminate the deceased, but the mere existence of the conspiracy by itself would not give rise to a further inference that A-2 was a conspirator. For

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that, the prosecution had to prove something positive, which in this case, the prosecution has not been able to prove. [Paras 53, 54] [1074-B-C; 1075-C-H; 1076-A-C] A

3.7. In the instant case, it is not possible to hold that the acts done by A-2, A-4, A-5, A-6 and A-7 along with deceased A-1 and the subsequent act on the part of A-9, A-10 and A-11 formed a chain of circumstances which irresistibly prove the offence of conspiracy against these accused persons. What was actually done by A-2, A-3, A-4, A-5 and A-6 was that they travelled together between Coimbatore and Madurai they possibly stayed in Jankiram Hotel in their first stay. Then there is a missing link as to how they proceeded to Tirunelveli and further to Chennai. The prosecution alleged that they then contacted A-7 in MLA's hostel in Chennai and met him. The prosecution has drawn complete blank. They have not been able to prove that A-7 actually stayed in MLA's hostel. A mere mention of the name called 'John Pandian' in the records of the MLA's hostel would be of no consequence unless A-7 as identified by somebody at the MLA's hostel. This undoubtedly was possible but that was not done by the investigation agency. Therefore, a very important link that A-2, A-4, A-5 and A-6 actually met A-7 in the MLA's hostel is not proved. Once this link is snapped, the whole prosecution theory about the conspiracy must fall down. Even if it is presumed that these four persons were sent by A-1 to contact A-7 there is absolutely no evidence that A-1 in any manner knew about A-7 or he wanted to contact him and, therefore, he sent A-2 who took the help of A-4, A-5 and A-6 to contact A-7. [Para 58] [1080-C-H] B C D E F

3.8. Similar is the story regarding the stay of these accused persons at Blue Star Hotel. The staff in Jankiram Hotel and the Blue Star Hotel could have been asked to identify these four persons that they at least stayed on relevant dates. That was also not done. As regards the G H

A contention that there was no explanation given by these accused persons as to why they travelled together from Coimbatore to Madurai and from Chennai to Coimbatore, there is no question of these explanations because in the first place it was not proved at all that these persons B actually travelled. Even if it is presumed that they did travel together, that by itself reaches the prosecution nowhere. They may have hundred other purposes for travelling. A mere non-explanation as to why the accused persons made those travels by itself will not create a piece of C evidence against these accused persons though that may be relevant in consideration of their participation. Further, even if it is presumed that from these accused persons money was discovered there is nothing on record that the money was given by A-1 to A-2 and through him to all the other accused persons. In fact, the prosecution was D extremely confused as to how much money was said to have been agreed to be paid for the murder and as to how much money was distributed. All these things completely shatter the case of conspiracy at least in so far as the A-2, A-4, A-5 and A-6 and A-7 are concerned. [Para 59] [1081- E B-F]

3.9. In regard to the alleged telephone calls, the prosecution has drawn complete blank. Under the circumstances, it is very difficult to hold that A-2, A-4, A-5 F and A-6 and A-7 were the conspirators. They have to be given the benefit of about for that purpose. It is undoubtedly true that A-2 who was a mere office boy was shown with the amount of Rs.1 lakh carrying with him. Now, one fails to follow as to why A-2 keep on parading G himself with Rs.2 lakh and how is it that on that occasion was caught along with Rs. 1 lakh. That is apart from the fact that A-2 has tried to give an explanation that it was his father's money who had received the same as his retiral benefits. The mere possession of a lakh of rupees on his H person would not take the theory of conspiracy any

further. There is another difficulty in the way of prosecution in this case. That is the acquittal ordered by the High Court of A-8 who was the taxi driver from whose taxi the photograph of the deceased along with case of Rs.23,000/- was seized. The State has not chosen to challenge that acquittal with the result that a very important link in the conspiracy is snapped. [Para 60] [1081-G-H; 1082-A-D]

State of NCT of Delhi v. Navjot Sandhu @ Afsan Guru **2005 (11) SCC 600;** *K.R. Purushothaman v. State of Kerala* **2005 (12) SCC 631 – affirmed.**

Major E.G. Barsay v. State of Bombay **AIR 1961 SC 1762;** *Kehar Singh & ors. v. State (Delhi Administration)* **1988 (3) SCC 609;** *State v. Nalini & Ors.* **1999 (5) SCC 253;** *Yashpal Mittal v. State of Punjab* **[1977 (4) SCC 540;** *State of Himachal Pradesh v. Krishan Lal Pradhan & Ors.* **1987 (2) SCC 17;** *Mohd. Khalid v. State of West Bengal* **2002 (7) SCC 334;** *Mohammed Usman Mohd. Hussain Maniyar v. State of Maharashatra* **1981 (2) SCC 443;** *V.C. Shukla v. State* **1980 (2) SCC 665;** *Esher Singh v. State of A.P.,* **[2004 (11) SCC 585];** *Van Riper v. United States* **(13 F 2d. 961) (2 nd Cir, 1926);** *Bhagwan Swarup Lal Bishan Lal etc.etc v. State of Maharashtra* **AIR 1965 SC 682;** *State of Maharashtra v. Som Nath Thapa* **JT 1996 (4) SC 615;** *Ajay Aggarwal v. Union of India & Ors.* **1993 (3) SCC 609 – referred to.**

American Jurisprudence, ***2nd Edn.*** **Vol.16, Page 129;** ***Halsbury's Laws of England*** **– referred to.**

4. In conclusion, A-9 and A-10 are held guilty and the judgment of the appellate Court convicting them is confirmed. However, the appeals filed by A-2, A-4, A-5, A-6 and A-7 are allowed giving them the benefit of doubt and they are acquitted. Since A-1 and A-11 are reported to be dead, the appeals by them are declared to be infructuous. [Para 61] [1082-E-F]

A **Case Law Reference:**

	1979 (1) SCC 31	relied on	Para 28
	1999 (4) SCC 370	referred to	Para 32
B	AIR 1961 SC 1762	referred to	Para 55
	1988 (3) SCC 609	referred to	Para 55
	1999 (5) SCC 253	referred to	Para 55
	(13 F 2d. 961)	referred to	Para 55
C	1977 (4) SCC 540	referred to	Para 55, 57
	1987 (2) SCC 17	referred to	Para 55
	2002 (7) SCC 334	referred to	Para 55
D	1981 (2) SCC 443	referred to	Para 55, 57
	2005 (11) SCC 600	affirmed	Para 55
	1980 (2) SCC 665	referred to	Para 55, 56
E	(2004) 11 SCC 585	referred to	Para 56
	AIR 1965 SC 682	referred to	Para 57
	JT 1996 (4) SC 615	referred to	Para 57
	1993 (3) SCC 609	referred to	Para 57
F	2005 (12) SCC 631	affirmed	Para 57

CRIMINAL APPELLATE JURISDICTION : From the Judgment & Order dated 04.04.2006 of the High Court of Judicature at Madras in Criminal Appeal No. 121 of 2003.

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WITH

Crl. A. Nos. 453, 544, 503 of 2007, 272 of 2008 & 2285 of 2010.

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Shakhar Naphade, K. Ramamoorthy, V. Krishnamurhy, P.N. Ramalingam, Priscilla Pandian (for M. Vijaya Bhaskar) E.M.S. Aram, Senthil Jagadeesan, V. Ramasubramanian, V. Mohana, Ravi Kumar Tomar, Sajith P. Warrier, B.M. Jha, Vikash Kumar, Sriram J. Thalapathy, S. Thanajayan, Promila Saktni Murugan, T. Harish Kumar for the appearing parties.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. This judgment will dispose of Criminal Appeal Nos. 452 of 2007, 453 of 2007, 455 of 2007 and 503 of 2007, 272 of 2008 and SLP (Crl.) 1217 of 2007.

2. Leave granted in SLP (Crl) 1217 of 2007.

3. All these appeals are against the conviction of accused persons who were convicted by the trial Court and the appellate Court for offences under Sections 120B, 302 read with Section 109, Indian Penal Code (IPC) and Section 302, IPC substantively.

4. Initially, there were as many as 11 accused persons tried for the offence of murder of Vivi @ Vivek @ Vivekanandan. The trial Court convicted the original accused No. 9, Kumar s/o Vellaichami, accused No. 10, Pavunraj @ Pavun s/o Poothiyamuthu and accused No.11, Prince Kumar @ Prince @ Balan s/o Amalraj for the offence under Sections 302, IPC read with Section 34, IPC. While accused No.9, Kumar s/o Vellaichami was convicted for the substantive offence the other two accused persons were convicted with the aid of Section 34 IPC. The trial Court acquitted accused No.3 Subramaniam @ Subbu Kutty s/o Ramasamy Gounder. There was no appeal against his acquittal filed by the State. Venkatraman Krishnan @ Venkatraman @ Thambu, s/o Surya Kumar (accused No.1), Sivakumar, s/o Maruthachalam (accused No.2), Ubaiadulla @ Tamil Selvan, s/o Mohammed Yusuf (accused No.4), Yusuf, s/o Abdullah (accused No.5), Abdul Kareem @ Kareem, s/o Hanifa (accused No.6), John Pandian, s/o Benjamin (accused No.7),

A Ganesan, s/o Sudalaimuthu (accused No.8), Kumar, s/o Vellaichami (accused No.9), Pavunraj @ Pavun, s/o Poothiyamuthu (accused No.10) and Prince Kumar (accused No.11) were convicted for offence under Section 120B, IPC. Venkatraman (accused No.1), Sivakumar (accused No.2), B Ubaiadulla (accused No.4), Yusuf (accused No.5), Abdul Kareem (accused No.6), John Pandian, (accused No.7) and Ganesan (accused No.8) were also convicted for offence Under section 302, IPC read with Section 109, IPC. Out of these accused persons, barring accused No.3, who was acquitted, all C the rest filed appeals before the High Court. The appeal filed by original accused No.8, Ganesan was allowed and he was acquitted. The appeals of the remaining accused persons were dismissed and the conviction and sentences passed against them were confirmed. During the pendency of this appeal, D however, Venkatraman (accused No.1) committed suicide while accused No.11, Prince Kumar @ Prince died. Thus, in the present appeals, we are left with original accused Nos. 2, 4, 5, 6 and 7 and accused Nos. 9, 10 and 11. For the sake of convenience, we shall refer to the accused persons from their E original accused numbers.

5. This is a pathetic story of a triangle of love having resulted in the gruesome end of the deceased. We shall first start with the gruesome murder of deceased Vivek @ Vivekanandan which took place on 17.8.1993 at about 10.15 a.m. on a busy F road called Diwan Bahadur Road in R.S. Puram near Richy Rich restaurant at Coimbatore. The prosecution painted a picture that Vivek and the original accused No.1 Venkatraman, whose family owned Laxmi Vilas Mills at Coimbatore were studying in the same college. One Sunitha (PW-3) was also studying with them. G Venkatraman (accused No.1) had a crush on Sunitha. However, there was a love affair going on between Sunitha and Vivek which ultimately resulted in the marriage of both of them. In fact, everything should have come to an end with that marriage and they should have been left to live happily forever but unfortunately H that was not to be. The prosecution painted a picture that even

after their marriage the fatal attraction which Venkatraman (accused No.1) felt for Sunitha did not end and he remained a close friend of Vivekanandan and Sunitha to the extent that on the earlier day on which the murder took place they had even gone to a movie along with their other friends. It has come by way of prosecution story that Venkatraman (A-1) was trying to be as near to the couple as possible and he had even provided them with a telephone line. He also helped the couple in establishing their house by helping to buy drapery for their newly set up abode. It was also tried to be shown by the prosecution that after the marriage of deceased Vivekanandan with Sunitha there was a brief love affair between accused No.1, Venkatraman and one Sherry who was a student of an engineering college. Though Venkatraman (accused No.1) got married to Sherry in a secret manner perhaps after converting her to Hinduism, Sherry did not honour her marriage vows and left the company of Venkatraman (A-1) and went back to Kerala and, thereafter, also got married to one Thomas and left the country to live in Middle East. This added fuel to the fire of love and jealousy in the heart of Venkatraman (A-1). He, therefore, hatched a conspiracy along with the other accused persons to eliminate the deceased Vivekanandan for ever.

6. It was suggested that Sivakumar (accused No.2) who was his petty employee helped him in establishing contacts with Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6). The prosecution alleged that Ubaiadulla was a worker of a political party and also moved with another name called Tamil Selvan. The prosecution alleged that Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) established contacts with one John Pandian (A-7) who was a resident of Tirunelveli and was a leader of an organization called Porur Union Dravidar Kazhagam.

7. Yusuf (A-5) and Abdul Kareem (A-6) used to know John Pandian (A-7) and, therefore, John Pandian (A-7) was contacted in order to arrange and hire assassins for this purpose.

A Sivakumar (A-2) Ubaiadulla (A-4) and Yusuf (A-5) first went to Madurai on 17.7.1993 by Rameswaram Express and from there to Tirunelveli and stayed in a lodge called Sri Jankiram Lodge. It is alleged that from there, they tried to contact John Pandian (A-7) on his telephone. However, not being able to contact him B and knowing that he had gone to Chennai they went to Chennai. It is the prosecution case that John Pandian was staying in MLA's hostel at Chennai and these accused persons met him there. It was alleged by the prosecution that after meeting and settling with John Pandian (A-7), Sivakumar (A-2) Ubaiadulla (A-4) and C Yusuf (A-5) and Abdul Kareem (A-6) came back to Coimbatore. In view of all these efforts, Venkatraman (A-1) withdrew Rs. 3 lakhs through Sivakumar (A-2), who was his office boy, on 30.7.1993 by a cheque drawn on Thirupur Bank which was got encashed through Sivakumar (A-2). It is alleged that the amounts D were given to Ubaiadulla (A-4) and Yusuf (A-5) and Abdul Kareem (A-6) and, thereafter, on receiving the money, Sivakumar (A-2) Ubaiadulla (A-4) and Yusuf (A-5) again went to Tiruneveli and stayed at Blue Star Hotel. It is alleged that John Pandian (A-7) arranged the services of Kumar s/o Vellaichami (A-9), Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-E 11) and hired them as assassins. They came to Coimbatore on 2.8.1993 from Tirunelveli and stayed at Vijaya Lodge. It was alleged that at that time Sivakumar (A-2) gave the photo of Vivekanandan to Kumar Vellaichami (A-9), Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11). This photograph was F originally a joint photograph of the marriage of deceased Vivekanandan with Sunitha. It was alleged by the prosecution that Venkatraman (A-1) neatly cut that photograph and separated the photograph of Vivekanandan from the photograph of Sunitha which remained with Venkatraman (A-1) and was later on seized G by the police. Nothing, however, happened on that day since there was heavy police *bandobast* at Coimbatore for two days and Vivekanandan was also not in town. Abdul Kareem (A-6) contacted John Pandian (A-7) from STD booth at Ukkadam locality in Coimbatore. It was alleged that Kumar Vellaichami (A-H 9), Pavunraj (A-10) and Prince Kumar (A-11) hired a car bearing

registration No. TAC 5667 of which Ganesan (A-8) was the driver. It was alleged that all the four accused persons went to Ooty and stayed at Arthi Lodge and on the morning of 17.8.1993, they proceeded from Ooty and came to Coimbatore and that very morning at about 10.15 a.m. Kumar s/o Vellaichami (A-9), Pavunraj (A-10) and Prince Kumar (A-11) assaulted deceased Vivekanandan mercilessly with *aruval* and murdered him on the spot. This incident was seen by one Selvaraj (PW-14), Paramasivam (PW-15) and Ramalingam (PW-16). On that day control room of B-2 police station received an information that a person was lying near Richy Rich Restaurant. One Valliappan who was the manager in a company run by Vivekanandan accordingly rushed to the spot, saw the situation and lodged the complaint. On that basis, police started the investigation.

8. The investigating officer, Thiru Rathinasabapathy (PW-56) started investigation. He found on the spot a *chappal* left by one of the accused persons near the dead body.

9. In order to investigate the offence, he divided the police officers in teams and deployed them to enquire about the accused, the occurrence and the motive therefor. He recorded statements of various witnesses including some of the eye witnesses during the investigation in the next 4-5 days. Venkatraman (A-1) was not to be seen. Thiru Rathinasabapathy (PW-56) had recorded statements of friends and all the possible witnesses who could have seen the ghastly incident. Almost all the angles were examined by the investigation officer by recording the statements of number of witnesses including the shop owners, friends and relatives of Vivekanandan. He also seized some documents. On 29.8.1993 at about 2.15 p.m., when he was present at Karuppa Gounder Street near Chellamuthu Fruit Commission Mandy along with Head Constable 509 and other police party, he chanced to see second accused Sivakumar who was going towards North with a cloth bag in his hand. He was arrested at that time and in his bag an amount of Rs. 1 lakh was found. This witness agreed to discover the hidden

A sum of Rs.21,000/- which was the balance after spending some money out of the amount given by Venkatraman (A-1). The arrest of Sivakumar (A-2) led to the arrest of Abdul Kareem (A-6) and Ubaiadulla (A-4). They also showed their readiness to disclose the incriminating articles including the money. Accordingly, Abdul
B Karim (A-6) agreed to disclose the two sovereigns of gold chain which he had purchased out of the commission money given to him as commission as also a scooter. The police party was led by Sivakumar (A-2) to his house where an amount of Rs.21,000/- was seized which was kept in a polythene bag. The arrested
C accused No.4, Ubaiadulla also took the police party to his house and an amount of Rs.23,000/- and a Titan watch was discovered. He also discovered a gold chain along with the receipt of Sri Vignesh jewellery for purchasing that gold chain from Abdul Kareem's house. At about 6.30 the police party reached the
D house of the Venkatraman (A-1). He was arrested. He agreed to discover the photograph of Sunitha and a pair of diamond ear studs purchased for her which he had hidden in a place. He took the police party to his newly built house along with his father from where he took out from a white plastic bag kept in the safe locker
E a colour photograph of Sunitha which was a counterpart of Vivekanandan's photograph and a pair of diamond ear studs. The police party was then taken by Abdul Kareem (A-6) to Sudarshan Lodge, Udumalpet-Dharapuram Road from where the police party arrested Ganesan (A-8). The car in which assailants had travelled, bearing No. TAC 5667, at that time was
F parked along with Dharapuram Raod on the Northern side of Sudarshan Lodge. The car was searched and the police party found an amount of Rs.13,000/- from beneath the rear seat of the car and the photo cutting of deceased which was kept in a rose colour cover. There was a trip sheet in the car, that was also
G seized. It was seen from the register of that lodge that someone had stayed in the false name and address, namely, Pandian Palanganatham, Madurai. The STD booth from where the calls used to be made to John Pandian (A-7) was also identified by Abdul Kareem (A-6). It was booth No. 30893. The investigating

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officer seized the STD calls register roll confirming that number of calls were made to telephone No.72324 of Tirunelveli which was the telephone number of John Pandian (A-7) on various dates like 6.8.1993, 9.8.1993 again 6.8.1993, 19.8.1993, 11.8.1993, 13.8.1993 and 16.8.1993 etc. There were in all ten calls made of various durations. Yusuf (A-5) surrendered by himself. The auto driver Paraman @ Paramasivam (PW-15) who was the eye witness was also found and his statement was recorded. The documents at Vijayalaxmi Mills of which Venkatraman (A-1) was the owner were seized. The records at MLA's hostel in Chennai were also seized. It was then found that Pavunraj (A-10) and Prince Kumar (A-11) had surrendered before Judicial Magistrate and they were taken into custody. The cheque books and the cheque dated 13.7.1993 was also seized. The train reservation records of journey of Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) were also found by the investigating officer and seized. The records of Vijayalaxmi Lodge were found out. The investigating officer also collected the handwriting of Sivakumar (A-2), Ubaiadulla (A-4), Pavunraj (A-10) and Prince Kumar (A-11) and also found out the bank books etc. After the arrest of Pavunraj (A-10) he agreed to discover Rs.2,000/-. He accordingly, discovered those articles. So also Prince Kumar (A-11) agreed to discover the amount of Rs. 5,000/- and the photograph of Annachi John Pandian (A-7). This was the connection of Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11) with John Pandian (A-7). He took him to his house in Anna Nagar and took out Rs.5,000/-and a gold minor chain weighing 12 gms. The money found out by Pavunraj was kept in a cover on which the words 'Vijayalaxmi Mills' had been printed. The investigation was conducted for finding out the correctness of statement made by Ubaiadulla (A-4) and the records of Jankiram Lodge were also seized. The record of Blue Star Lodge, Tirunelvelli were also found out and seized. The owner of the car was also contacted. John Pandian (A-7) surrendered before the Judicial Magistrate. Before that, the investigating officer had also seized the minute books of

A B C D E F G H

A Coimbatore District Dravidar Kazhagam and Porur Union Dravidar Kazhagam. John Pandian's house was also investigated and it was found that telephone No.72324 was in that house only. The Test Identification Parade was got conducted on 28.10.1993 in respect of Pavunraj (A-10) and
B Prince Kumar (A-11). The witnesses, namely, Selvaraj (PW-14), Paraman @ Paramasivam (PW-15) and Ramalingam (PW-16) took part in that Test Identification Parade.

10. Accused No.9, Kumar was arrested later on. He agreed
C to discover the *aruval* with which he had committed the murder. The Identification Parade in respect of Kumar (A-9) was held on 1.11.1993. The material objects seized were sent for chemical analyzer examination in the forensic science laboratory and after completing the investigation the charge sheet was filed on 1.8.1995. The charges were framed and as many as 56
D witnesses came to be examined on behalf of the prosecution. The accused persons abjured their guilt and were ultimately convicted as has been stated above. Their appeals having been dismissed, the matters are now before us in these appeals.

E 11. Ms. V. Mohana who appeared for accused Nos. 9, 10 and 11, namely, Kumar, Pavunraj and Prince Kumar respectively, extensively argued and pointed out that the evidence regarding their identification and also the evidence of the so-called eye witnesses was not creditworthy. She pointed out that there was
F no reason for these accused persons who were the residents of Tiruneveli to have any grudge against the deceased. She also pointed out that there was no motive on the part of these accused persons. Her further contention was that barring one eye witness, the other so-called eye witnesses became available for recording
G their statement after considerable time and hence they were not creditworthy. Further, her contention was that there was no reason why the natural witnesses were avoided and the three unnatural witnesses came to be offered. Her further contention was that the evidence of witnesses on Test Identification Parade was also not satisfactory and the whole exercise was a farce.
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She further urged that there was no evidence much less the direct evidence against these accused persons. In so far as the circumstantial evidence was concerned, she pointed out that an effort on the part of the prosecution to connect these accused persons with the crime was of no consequence. The so-called discoveries and the evidence regarding their stay in the hotels or travelling in the car given by Ganesan (A-8) was also of no consequence. She urged for acquittal. A B

12. Shri Senthil Jagadeesan, learned advocate appearing for Sivakumar (A-2) and Abdul Kareem (A-6) painstakingly took us through the evidence and urged that these accused persons were roped in only on the so-called circumstantial evidence. He pointed out that the prosecution had miserably failed to establish any conspiracy at all and further role played by or connection of these accused persons with that conspiracy. The learned counsel pointed out that the theory of discovery from the accused persons of substantial amount was nothing but a myth and the so-called discoveries made were farcical. He further pointed out that there was no reason for a wealthy and rich person Venkatraman (A-1) to take help of his office boy to contact John Pandian (A-7) and enter into a conspiracy to eliminate the deceased. The learned counsel further argued that the whole prosecution story of conspiracy was on an extremely weak pedestal and had collapsed. The counsel further argued that there was good explanation offered by the accused No.2, Sivakumar for the amounts which were allegedly discovered from his house and the Courts below have looked at the whole affair with jaundiced eyes. C D E F

13. Shri E.M.S. Anam, appearing for Ubaiadulla (A-4) urged that there was nothing to support the theory that Ubaiadulla was known as Tamil Selvan also. Learned counsel pointed out that he had no reason whatsoever to be in contact with Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11). He further argued that the evidence regarding his handwriting was also absolutely brittle. He further argued that there was no evidence that this G H

A accused ever went to Chennai. He also suggested that the discovery was a farce.

14. Shri Ravi Kumar Tomar, learned counsel appearing for Yusuf (A-5) pointed that that there was no discovery from this witness at all and there was hardly any evidence worth the name against this accused excepting that his name was mentioned in the reservation charts and the reservation slips, that too in a different manner.

15. Shri Shekhar Naphade, learned Senior Counsel appearing for John Pandian (A-7) reiterated that there was absolutely no evidence against him. He pointed out that there was no nexus established between Venkatraman (A-1) and John Pandian (A-7) or Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) and John Pandian (A-7). It was pointed out that John Pandian was a well known political figure and, therefore, the telephone calls made from a particular booth by itself could not be viewed as an incriminating circumstance. Similarly, his photograph being found with Kumar (A-9) was also of no consequence whatsoever. It was pointed out that there was no evidence worth the name available to establish that this accused had stayed in Chennai at MLA's hostel and he met the other accused persons there and hatched the conspiracy. According to the learned counsel much stronger evidence was required for coming to the conclusion that there was conspiracy and this accused was an active member thereof.

16. As against this, Shri K. Ramamoorthy, learned senior counsel urged that this was a case of classic investigation where the investigation officer had left no stone unturned. Learned counsel was at pains to point out that there was a definite aim with which the accused persons moved. Shri Ramamoorthy urged that it was not open to accused to insist on re-appreciation of evidence. He further urged that firstly, the evidence of identification of the three accused persons, namely, Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11) was wholly reliable

and there was no cross-examination worth the name of the Magistrate or even the witnesses who had identified the accused persons and the evidence was rightly accepted by both the Courts below.

17. We were taken through the evidence against the accused persons painstakingly by Shri Ramamoorthy who pointed out that a person like Sivakumar (A-2) could not be expected to have an amount of over a lakh of rupees which was found with him and the explanation was palpably false. Similar was the case in respect of the other accused persons. Insofar as the eye witnesses are concerned, the learned counsel urged that the statement of one of the eye witnesses was recorded on the same day and he had the opportunity to see the incident in broad day light and the witnesses had correctly identified Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11) in the identification parade. According to the learned counsel the photographs of the accused persons were never published. He argued that the very fact that the Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11) came all the way from Tirunelveli and murderously assaulted the deceased suggests that there was a conspiracy. Learned counsel very painstakingly pointed out to us the love angle of this whole theory and pointed out that it was the crush in the mind of the first accused, Venkatraman which has resulted in the whole tragedy. As regards the conspiracy theory the learned counsel urged that there was no explanation by Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) whatsoever for their suspicious movements. He pointed out that it was very difficult to prove the conspiracy by direct evidence and, therefore, we would have to jot down the circumstances as proved by the prosecution and then come to the conclusion regarding the existence of criminal conspiracy which was correctly drawn by trial and appellate Court. As regards John Pandian (A-7), learned counsel urged that he was the kingpin and his complicity was clear as he was the only person who was known to Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11). Shri Ramamoorthy also pointed out that there was

A false explanation given of these accused persons in their examination under Section 313, Cr.P.C and that itself suggested that the accused persons were involved in the matter.

18. It is on this basis of rival claims that we have now to B examine the matter to decide whether the conviction of the accused persons is justified.

19. Peculiarly, in this case the accused-appellants can be divided into two groups. The first group is Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11) [Prince Kumar (A-11) is now C no more and the appeal by him has abated] who were involved by the direct ocular testimony and were also part of the conspiracy to murder Vivekanandan. The second group is that of the accused persons being Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) and John Pandian (A-D 7) who are roped in as the conspirators. There is, however, no direct evidence against them insofar as the act of assault on deceased is concerned. Thus, the only difference in the two groups is that while there is direct evidence of the eye-witnesses regarding the assault on Vivekanandan against the first group, E there is no such evidence in respect of the second group and the prosecution will have to depend upon the circumstantial evidence of conspiracy against them.

20. We, therefore, propose to consider the matter group-wise. The conviction of Kumar (A-9), Pavunraj (A-10) will depend F upon the evidence of eye-witnesses along with the other circumstantial evidence of their complicity in this crime. However, it cannot be disputed that if the evidence of the eye-witnesses is acceptable wholly as it was held by the trial Court and the appellate Court, then that by itself can become the basis of their G conviction. Normally, once the evidence is accepted by the trial and the appellate Court, this Court does not go into the exercise of re-appreciation unless it is shown that the appreciation of evidence by trial and appellate Court is perverse, not at all acceptable to trained judicial mind or so faulty as to require the H inference of this Court or that the trial and appellate Court have

relied on some inadmissible piece of evidence or have left out of the consideration some evidence which they were bound to consider and appreciate. We have seen the evidence and the judgments of trial and appellate Courts very closely so as to satisfy ourselves as to whether the trial and appellate Court have properly appreciated the same and recorded the verdict of conviction.

21. We shall first take up the case of Kumar (A-9), Pavunraj (A-10). Prince Kumar (A-11) now having expired, we need not comment about his complicity which, however, will be necessary to consider while considering the case of Kumar (A-9) and Pavunraj (A-10). The evidence against the three accused basically consists of the eye-witness account by Selvaraj (PW-14), Paramasivam (PW-15) and Ramalingam (PW-16). The prosecution has sought to support this evidence by leading the evidence of the Magistrate who held the Identification Parades for identifying Pavunraj (A-10) and Prince Kumar (A-11) by witnesses Ramalingam (PW-16), Selvaraj (PW-14), Shanmugasundaram, Nagarajan, Paramasivam (PW-15), M.P.S. Narayanan and Rajan. Out of these witnesses who were asked to identify the said two accused the prosecution has remained content by examining Selvaraj (PW-14), Paramasivam (PW-15) and Ramalingam (PW-16). The prosecution did not examine Shanmugsundaram, Nagarajan, M.P.S. Narayanan and Rajan. This identification Parade was held on 15.9.1993 in Central Prison, Coimbatore. The second Identification Parade was held on 28.10.1993 for the identification of Kumar (A-9) by the same seven witnesses. Rajsekharan (PW-54) drew the mahazars wherein it was suggested that Ramalingam (PW-16) had correctly identified Pavunraj (A-10) and Prince Kumar (A-11). He identified both the accused persons correctly, twice. The evidence of the witnesses and the mahazars also suggested that Selvaraj (PW-14) correctly identified Prince Kumar (A-11) and Pavunraj (A-10) twice. Similarly, Paramasivam (PW-15) identified Pavunraj (A-10) and Prince Kumar (A-11) twice, like the two earlier witnesses. The mahazar was also proved as

A Exhibit P-84. This witness also held the Test Identification Parade in respect of Kumar (A-9) on 28.10.1993 at the same place. It was deposed by this witness that Ramalingam (PW-16) correctly identified Kumar (A-9) twice. He further deposed that Selvaraj (PW-14) had also correctly identified Kumar (A-9) twice. He also
B deposed that Paramasivam (PW-15) could not identify Kumar (A-9). Exhibit P-85 is the mahazar of the second Identification Parade held on 28.10.1993. The witness also reiterated that the necessity of identifying twice was on account of the opportunity given to the accused persons to change their clothes after the
C first identification.

22. The prosecution heavily relied on the evidence of Rajsekharan (PW-54) and Exhibits P-84 and P-85. The third circumstance relied upon by the prosecution is the discovery of *aruval* (M.O.-1) at the instance of Kumar (A-9) from Hindu
D Cremation ground along with Udumalpet Road, Pollachi. In that behalf the prosecution relied on the evidence of Rathinasabapathy (PW-56), the investigating officer and Anand (PW-41).

E 23. The next circumstance relied upon by the prosecution was the engaging of taxi No. TAC 5667 by Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11) which was used by them for travelling from Tirunelveli to Ooty and Ooty to Coimbatore and back via Udumalpet. The prosecution sought to prove through
F the evidence of Sidhharth (PW-43) that this taxi passed through Ooty through check post at Barliar, Mettupalayam Road on 16-17/8/1993 and thereby the prosecution wanted to prove that these three accused persons along with Ganesan (A-8) (already acquitted by the High Court) were in Ooty and the taxi had paid
G the toll vide Exhibits P-61 and P-62 on 16.8.1993. The prosecution also relied on Senthil (PW-44) to prove that the accused persons stayed at the night of 16.8.1993 in hotel called Arthi Lodge, Ooty. Page No.1013, Entry No.112 in the register, Exhibit P-63 showing the name of Kumar (A-9) and two others was sought to be proved by this witness.

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24. It was also tried to be suggested on the basis of the complaint and the First Information Report Annexures P-102 and P-103, respectively, the roles played by the three accused persons. Two of them waylaid deceased Vivekanandan and the third assaulted him. This supported the theory that Vivekanandan was assaulted by three persons in all. The next circumstance relied upon by the prosecution is the evidence of Ranjit Check (PW-50) who was the Scientific Officer who deposed that the footwear left by Kumar (A-9) matched with the foot prints of Kumar (A-9). Further the recovery mahazars and confessional statements by Pavunraj (A-10) under Exhibit P-54 and that made by Prince Kumar (A-11) in Exhibit P-55, two of the accused persons were sought to be connected. It was further suggested that the amount recovered in one of these recoveries was kept in an envelope in which there were printed words 'Vijay Laxmi Mills Ltd.'. The further circumstance relied upon was that in taxi No.TAC 5667 in which the three accused persons are alleged to have travelled extensively, cut photograph of Vivekanandan was found along with Rs.13,000/- under the back seat. The trip sheet found was also relied upon. These are all the circumstances relied upon against Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11). We will have to, therefore, consider these circumstances also which have been relied upon by the trial and the appellate Courts.

25. There can be no dispute that Vivekanandan (deceased) met a homicidal death. He died on the spot where he was assaulted and had suffered as many as 9 cut injuries on the vulnerable parts of his body like his shoulder, neck, right cheek, occipital region etc. The intention of the assaulters can be gathered from the nature of the injuries. The weapon used was M.O. 1 *veechu aruval*, a weapon with the handle and with the bent sharp blade.

26. Again this murder took place on the busy road of Coimbatore between 10 a.m. and 11 a.m. when there was sunlight and as such, the eye-witnesses had the full opportunity

A to witness the incident. Exhibit P-102 is the complaint which was given by Valliappan who was none else but the Manager of the company which Vivekanandan was running. This was given at 11 a.m. It was immediately after the investigating officer visited the spot and registered the offence that Ramalingam (PW-16) B became available to the police. His statement was recorded only after Valliappan filed the complaint. Therefore, on that count, at least insofar as Ramalingam (PW-16) is concerned, there can be no difficulty. The trial Court and the appellate Court have considered the criticism by the defence that the eye-witnesses C had changed the spot inasmuch as the eye-witnesses had referred to the incident having taken place near 'Titan Watch Shop' and not 'Titan Showroom' which it actually was. The appellate Court, in its elaborate judgment, has also considered few minor and insignificant contradictions regarding the location of autorickshaw stand and some shops and has held that the D incident took place near a restaurant called 'Richy-Rich'. The observation mahazar also suggested the same spot only. On that basis, a finding was written that the argument of the defence that the spot was sought to be changed was rejected. The said argument was addressed before us also. We, however, do not E find anything to hold that the prosecution witnesses, particularly, Selvaraj (PW-14) Paramasivam (PW-15) and Ramalingam (PW-16) had changed the spot. In fact, they would gain nothing by changing the spot. One common comment can be made about these witnesses that all of them were totally disinterested F witnesses. They had nothing against the accused persons nor were they interested in the accused so as to speak falsehood in order to obtain the conviction. It was argued by Ms. V. Mohana, learned Counsel for the appellant that these three eye-witnesses were the chance witnesses. We do not agree. Ramalingam (PW-G 16) had every reason to be near the spot as his place of working i.e. Prithvi Jewellers was near the spot. It cannot be forgotten that it was he who informed Valliappan that the deceased was murdered. Some comment can be made about the other two eye-witnesses, who in their evidence, asserted that they used H to come on the spot. Selvaraj (PW-14) had specifically stated

that he was doing his real estate business and that he alongwith his two other friends, namely, Shanmugasundaram and Nagaraj, used to assemble at 9'O clock in the morning and would continue to be there till 11 a.m. This witness even used to recognize deceased Vivekanandan. Similarly, Paramasivam (PW-15) used to drive auto and used to keep his auto near the Top Notch Shoe Shop. It is a well known fact that the auto drivers start their day from a particular spot where they usually come and then ply their auto in a particular area. This witness claimed that he used to ply his auto from D.B. Road where the incident took place. So, there is nothing wrong in the witnesses being present where they claimed to be. Ms. Mohana, learned Counsel tried to suggest that these witnesses were the chance witnesses and, therefore, we should discard their evidence on that count. That is not possible. Both the Courts below have relied upon their evidence holding them to be credible witnesses. This Court normally is very slow to take the exercise of re-appreciation of the evidence in such cases. Unless the appreciation by both the Courts below is found to be perverse, unsustainable and basically frivolous, this Court will not go into the exercise of re-appreciation of the evidence. We have seen the evidence very carefully and we do not find any such thing. Therefore, these witnesses cannot be dubbed as the chance witnesses.

27. Other criticism levelled against these witnesses was that the statements of Selvaraj (PW-14) and Paramasivam (PW-15) were not recorded immediately. While the statement of Selvaraj (PW-14) was recorded on 20.8.1993, Paramasivam (PW-15) became available for the statement after about 15 days. It is true that the criminal courts would expect the statements of the eye-witnesses to be recorded immediately or with least possible delay. The early recording of the statement gives credibility to the evidence of such witnesses. But then it is not an absolute rule of appreciation that where the statement is recorded late, the witness is a false witness or a trumped-up witness. That will depend upon the quality of the evidence of the witness. Selvaraj (PW-14) has explained that he was afraid and, therefore, did not

A come to the spot for 2-3 days. That is quite natural. It has come in the evidence of Rathinasabapathy (PW-56), the investigating officer, that he examined the statement of Ramalingam (PW-16) almost immediately after the inquest. As for Selvaraj (PW-14), if the witness did not turn up out of the fear, there is nothing
B unnatural. In this country, people are not keen to become the witnesses and avoid the police-interrogation. That should have happened with this witness. Even the other witness Paramasivam (PW-15) also avoided to go to the police or to be available to the police for 15 days. Though the period of 15 days
C is rather a longish period, that by itself should not be a reason to disbelieve him. The trial and the appellate Courts have been alive to this situation and have considered this aspect. Our attention was invited to the statement made by Ramalingam (PW-16) to the effect that he asserted that the statements of these two
D witnesses were also recorded on 17.8.1993, which was not correct. This circumstance was considered by the appellate Court and, in our opinion, rightly. We, therefore, need not go into that aspect. The evidence was severely criticized on the basis that all the three witnesses had contradicted each other. We do not think so. All the three witnesses had given graphic description
E of the incident. All of them have asserted that first two accused they being Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11) stopped the deceased and the third accused Kumar Vellaichami (A-9) started severely assaulting the deceased. Insofar as role played by these accused persons is concerned,
F the evidence of all the three eye-witnesses is in consonance with each other and there does not appear to be any reason to discard their evidence. In our opinion, the trial and the appellate Courts are right in accepting their evidence as truthful. There is not a word of cross-examination on the factum of assault and the
G manner thereof. Therefore, we are not impressed by the argument of Ms. Mohana that the evidence of these three witnesses should be discarded. We do appreciate the argument that the statement of Paramasivam (PW-15) was recorded after about 15 days, however, his evidence appears to be

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creditworthy. He was frank enough in admitting that he left the place and never came back for 15 days to run the auto. If he avoided the police for 15 days, there is nothing unusual about it. When we test this fact as against the quality of his evidence, it might be stated that the witness appears to be truthful and was rightly relied upon by the Courts below, ignoring the time taken for recording his statement. Insofar as Ramalingam (PW-16) is concerned, his evidence remained unshaken and like the earlier two witnesses, there was hardly any cross-examination.

28. All the three eye-witnesses have been corroborated by the fact that in the Test Identification Parade, they identified the accused persons. Barring Kumar s/o Vellaichami (A-9) who was not identified by one of the witnesses, namely, Parmasivam (PW-15), two other eye-witnesses have been able to identify all the three accused persons. We have very carefully seen the evidence of Rajsekharan (PW-54), the Magistrate, who conducted the Parade. Rajsekharan (PW-54) has deposed that in the first Identification Parade, only Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11) were available. He held the first Identification Parade in respect of these two accused persons on 15.9.1993 i.e. within one month of the incident. In that Parade, both the accused were identified twice by all these three witnesses. He had also included the other witnesses who were claimed to be the eye-witnesses by the police. However, it has come that only these three witnesses were able to identify the accused persons Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11) twice. We are impressed by the fact that even after changing their dresses, when the accused persons again stood for the identification, they were actually identified by all the three eye-witnesses. The second Test Identification Parade was held on 28.10.1993 as till then Kumar s/o Vellaichami (A-9) had not become available. Barring one witness, namely, Paramasivam (PW-15), both the eye-witnesses Selvaraj (PW-14) and Ramalingam (PW-16) were able to identify Kumar (A-9) twice. We have very closely considered the evidence of this witness. There is absolutely nothing which could be pointed out

A against the evidence being accepted. In our opinion, the trial and the appellate Courts have rightly accepted the evidence of Test Identification Parade, which has the effect of corroborating the evidence of the three eye-witnesses. It was stated that one of the eye-witnesses have failed to identify Kumar (A-9), but that B by itself will not be sufficient to view with suspicion the participation of Kumar (A-9). The other two witnesses Selvaraj (PW-14) and Ramalingam (PW-16) have actually identified him as the assaulter. The evidence of Identification Parade need not be viewed as a weak type of evidence as held in *State of Uttar* C *Pradesh Vs. Boota Singh & Ors.* [1979 (1) SCC 31]. We do not think that the evidence of these three eye-witnesses suffer from any infirmity.

29. Ms. Mohana, learned Counsel appearing on behalf of the appellant then urged that in the complaint, the person who D assaulted Vivekanandan (deceased), was described as a tall middle aged man and two persons of the lean body of the same age group accompanied him. In the first place, in the absence of evidence of Valliappan who was the maker of the FIR, this contention cannot be appreciated. Nothing has been brought E about in the cross-examination of these three witnesses and, more particularly, in the cross-examination of Ramalingam (PW-16) that they had described the assailants to Valliappan and that it was on that basis that he made the report. Ms. Mohana very earnestly urged that it was an admitted position that this F description did not fit any of the accused persons. We do not think that the description given by Valliappan could affect the credibility of the evidence of these three eye-witnesses who had the full opportunity to see the accused persons and who had correctly identified the accused persons in the Test Identification G Parades. Ms. Mohana urged that the accused persons were shown to the witnesses earlier and irresponsible suggestions were also thrown to the witnesses that they had seen the photograph of the accused persons in the newspaper. The defence has not brought on record any such newspaper where H the photographs of the accused persons were published. On the

other hand, we find that Paramasivam (PW-15) had, in a flawless manner, conducted both the Identification Parades and withstood his cross-examination very well. In fact, the eye-witnesses' account supported with by the evidence of Test Identification Parades is more than enough to seal the fate of Kumar (A-9), Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11).

30. Some other circumstances, however, were brought on record by way of circumstantial evidence against the three accused persons. The most important of these circumstances is the discovery of *aruval* effected at the instance of Kumar (A-9) from Hindu cremation ground along with Udumalpet Road, Pollachi. This discovery was tried to be proved by the evidence of Anand (PW-41) and PW-56, the Investigating Officer. It was deposed by Anand (PW-41) that while he was standing at the bus stop near Udumalpet Road with one Thirugnanasambadam, a police van came and stopped. An Inspector and some police men and other persons alighted from that van. The said person was the 9th accused, Kumar. The Inspector told Anand (PW-41) that the 9th accused, Kumar was going to take out and produce a thing for which he was required as witness. He further suggested that the 9th accused took all of them to the Hindu cremation ground along with Udumalpet Road, Pollachi and from the Northern corner of that cremation ground at a distance of 50 feet took out the *veechu aruval* from the thorny bush.

31. Rathinasabapathy (PW-56) supported this version and reiterated that Kumar had surrendered before the Judicial Magistrate No.6, Madurai and, therefore, he gave requisition to Judicial Magistrate on 21.9.93 for conducting his identification parade. He referred to the identification parade held on 29.10.93. Kumar (A-9) gave a voluntary confessional statement before the witness where he had urged that if he was taken he would discover the *aruval*. The witnesses Jayraman (PW-40) and C.P.Rajan before whom this statement was made, unfortunately left as they had some work and, therefore, he merely

A recorded their statements. According to him, Kumar (A-9) then took them to the Hindu cremation ground along with Udumalpet Road, Pollachi and in presence of two other Thiruganasambandam and Anand (PW-41) took out a blood stained *aruval* from thorny bush which was 50 feet away from
B the road on the Northern side in the North East corner of the cremation ground. The said confessional statement has been brought on record vide Exhibit P.56 while the seizure Mahazar has been proved as Exhibit P. 57.

32. Very heavy criticism was leveled by Ms. Mohana against
C this discovery on account of the fact that while the confessional statement was shown to have been made before two different witnesses, namely, Jayraman and C.P. Rajan, two other witnesses were kept present at the time of actual discovery. We have seen the evidence of Jayraman (PW-40) who has spoken
D about the confessional statement having been made before him. In fact Exhibit P.56 clearly suggests as also the evidence of this witness that the confessional statement was made by Kumar (A-9). He has also referred to the presence of C.P.Rajan. He was cross-examined extensively by defence. However, there was
E nothing brought out in cross-examination. It was inspector himself who recorded the statement on 29.10.93. We find nothing suspicious in the evidence of this witness or even in the evidence of PW-41, Anand. Anand has also stood firm during his cross-examination. As has already been stated earlier, the learned
F Counsel urged that two different sets of witnesses could not have been used, one for the confessional statement and other for the seizure Mahazar. There is no rule that the same set of witnesses have to be used for both purposes, namely, for the confessional statement and the subsequent discovery in pursuance thereto.
G Undoubtedly, if the same set of witness is used, the discovery will become more acceptable and would gain credibility as the witnesses who have heard confessional statement would also have opportunity to see that what was confessed has resulted in the discovery in terms of the confession. But where it is found
H that the witnesses are even otherwise acceptable, there would

be no question of rejecting the discovery only on this count. It cannot be forgotten in this case that the common witness PW-56 who was present both at the time of confessional statement and the subsequent discovery of *aruval*. The Inspector has given a good explanation as to why he did not take the earlier pair of witnesses, namely Jayraman (PW-40) and C.P.Rajan. According to him those two witnesses left on account of some work. We do not find this very unusual, particularly, in the circumstances of this case. It has been held by this Court in *State of Himachal Pradesh Vs. Jeet Singh* [1999 (4) SCC 370] that even if there are no witnesses present and the confession is made only to the Investigating Officer, still the discovery can be accepted. In this case that did not happen. The confessional statement was undoubtedly made before a witness who entered the witness box and offered himself for cross-examination. Therefore, the fact that the confessional statement was made cannot be disputed nor can it be disputed that Kumar (A-9) ultimately discovered the *veechu aruval* from the cremation ground.

33. It was then urged by the learned counsel that this was a open place and anybody could have planted *veechu aruval*. That appears to be a very remote possibility. Nobody can simply produce a *veechu aruval* planted under the thorny bush. The discovery appears to be credible. It has been accepted by both the Courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the Forensic Science Laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case.

34. This takes us to the other circumstances against accused No.9, Kumar. The prosecution has brought on record that the taxi No. TAC 5667 which was being driven by Ganesan

A (A-8) had passed through Ooty. The prosecution examined Senthil (PW-44) and Siddharth (PW-43) to prove that the taxi passed through the check post. There is nothing to disbelieve this fact. Therefore, this fact must be accepted that taxi did pass twice through Ooty. This circumstance has been accepted by B both the Courts below. It is, therefore, proved that this taxi was in Ooty on 16.8.93. It cannot be disputed that this was the taxi used by three accused persons to travel from Tirunelveli to Coimbatore. There is the evidence led by Senthil (PW-44) to prove that the accused persons stayed in the night of 16-17/8/ C 93 at Hotel Arthi Lodge, Ooty. That circumstance was sought to be proved by proving the entry No.1013 at Page 112 on the Guest Register. The witness suggested that the guests had come on the night of 16.8.1993 at about 7:00 p.m. A person, named, Kumar (A-9) came from Tirunelveli and told his name as D Kumar S/o Vellaichamy. He also deposed that there were three other persons accompanying the said Kumar and that they went to the room and left at 6 a.m. on 17.8.93. Unfortunately, for the prosecution though the investigation agency could lay hands on the register, the witness did not identify any of the accused E persons and, more particularly, Kumar (A-9). That may be a very slander circumstance. It does further suggest that Kumar (A-9) had stayed in Ooty along with two accused as was suggested in the prosecution case. The criticism was that no accused person was identified by this witness even in the Court. In fact it would have been surprising had the witness been able to identify F the accused because he must have met the accused only for a very short time when the accused gave his name and address at Tirunelveli. However, it cannot be a co-incidence alone that the full name of the accused with his address in Tirunelveli should find place in the register of Arthi Lodge. This circumstance also G has been accepted by the trial Court and appellate Court and we find no reason to take a different view.

35. The other circumstance against Kumar (A-9) is the evidence of Ranjit Check (PW-50) who was a Scientific Officer. H In his evidence he asserted that he was working as Scientific

Officer in the Physics Department. He examined M.O.20 which was a colour photograph of deceased Vivekanandan which was found from the taxi in its search. He matched M.O.20 with M.O.17 which was a colour photo of Sunitha, the unfortunate widow of Vivekanandan. He asserted that item Nos.1 and 2 which were the photographs of a male and a female matched with each other and that they were both the cut pieces of one photograph, the colour factor in both the photographs was identical, the rear side of the photograph was matching and he, therefore, opined that items Nos.1 and 2 were the parts of one and the same photograph. It must be remembered that the photograph of Sunitha was found from the possession of Vekatraman (A-1) while the photograph of deceased Vivekanandan was found from the taxi in which Kumar (A-10), Pavunraj (A-10) and Prince Kumar (A-11) travelled. He also asserted that the foot print which was found in item No.3 footwear matched with footwear which was found in item No.5 footwear. He deposed *on examination of the foot prints, the footprint which was found in item No.3 footwear matched with one that was found in item No.5 footwear.* Therefore, he asserted that the foot print in item No.3 matched with footprint which was found as item No.5. It must be remembered that this footwear was left behind on the scene of occurrence and was seized by the Investigating Officer on the same day. He, therefore, came to the conclusion in the following aspects:

"1. General measurements

2. Shape of fingers

3. Shape and size of the bottom of the fingers"

He, therefore, opined that left foot print found in item No. 3 and the left foot print found in item No. 5 footwear had been created by one and the same left foot. Similarly the foot print of the right foot was also found to be matching in item Nos.4 and 6. He, therefore, issued a report (Exhibit P.73). We have seen

A Exhibit P.74 and Exhibit P.75 as also the points of agreement which have been arrived at in respect of both the right and left foot. It seems that there was absolutely no effective cross-examination of this witness nor was the witness cross-examined on the salient features that he deposed to. We do not find any
B reason to discard this technical evidence. It was proved that the said footwear was left by Kumar (A-9) as it matched his feet and, therefore, we proceed to accept this evidence also. This circumstance will directly connect Kumar (A-9). It was contended by the prosecution that the accused persons travelled in Taxi No.
C TAC 5667. Once it was proved that the photograph was lying under the back seat of the taxi, the relevance of the taxi and the accused having travelled in the same becomes all the more prominent.

36. Insofar as the other two accused persons are concerned,
D we need not consider the case of A-11, Prince Kumar since he has already died and his appeal has become infructuous. Insofar as Pavunraj (A-10) is concerned, apart from the fact that he was identified in the identification parade by all the eye witnesses, he was said to have discovered Rs.5000/- from the roof of his
E house allegedly kept in a cover on which the words 'Vijay Laxmi Mills Ltd' had been printed. In the same envelope there was a photograph of John Pandian. In his deposition, Rathinasabapathy (PW-56) suggested that he had examined accused Pavunraj when he arrested him and during the
F interrogation he voluntarily gave a confessional statement at 5.30 p.m. wherein he confessed that he had hidden Rs.2000/- and a gold chain and that when he was taken it was proved. Similarly, the investigating officer deposed about the confessional statement of Prince Kumar (A-11) that if he was taken he would
G show the place where he had hidden the sum of Rs.5,000/- and photograph of Annachi John Pandian (A-7). Now, it so happened that when these accused persons were taken on 17.9.1993 exactly reverse happened and Prince Kumar (A-11) is said to have discovered Rs.2000/- and a gold chain weighing 12 grams
H whereas Pavunraj (A-10) is said to have discovered the envelope

containing Rs.5000/- and photograph of John Pandian. This was obviously a mistake. When we see Exhibits P.113 and P.114 it seems that Exhibit P.113 suggests that the house from where the said amount of Rs.2000/- and the minor chain was recovered in pursuance of the so called confessional statement belonged to one Amalraj. Exhibit P.113 was sought to be connected with Exhibit P.54 which is supposed to be the confessional statement of Pavunraj, while Exhibit P.55 was connected with Exhibit P.114 and this confessional statement. Exhibit P.55 is supposed to have been given by Prince Kumar (A-11). When, however, we see the evidence of PW-56 there is obviously a mix up because according to him while Pavunraj has confessed about Rs.2000/- and a minor chain that seems to have been recovered by Prince Kumar and while Prince Kumar agreed to discover Rs.5000/- and photograph of Annachi John Pandian, the said articles were discovered by Pavunraj. This obvious mix up will compel us to reject both these discoveries. In fact the discoveries of Rs.2000/- and a gold chain would be of no consequence as they cannot be said to have been connected with the crime. On this backdrop of a mix up when we seen the evidence of Jayraman (PW-40), that also does not help the prosecution. However, as we have pointed out earlier, there is sufficient evidence against Kumar (A-9), Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11) and the trial and the appellate Courts have correctly convicted them for the offence under Section 302 in case of Kumar (A-9) and others with the aid of Section 34 IPC.

37. This brings us to the case of Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) and John Pandian (A-7). As has already been stated earlier, the High Court has acquitted Ganesan (A-8), who was convicted by the trial Court. The State Government has not challenged his acquittal, leaving only the other accused persons mentioned above. All these accused persons have been convicted as being the conspirators. Initially, when this appeal was filed, even Venkatraman (A-1), who was convicted, had filed an appeal challenging his conviction. He was also roped in as being a conspirator. Since he has died

A during the pendency of these appeals, we need not consider his case and his appeal stands disposed of as infructuous. There is no prayer before us to continue his appeal even after his death and as such, his appeal being Criminal Appeal No.454 of 2007 must be held to be infructuous; however, Venkatraman (A-1) was
B a major player in the conspiracy according to the prosecution's case. The prosecution pleaded that the idea of elimination of Vivekanandan (deceased) must have been conceived in his mind owing to inability to marry Sunitha (PW-3). Thus, he is painted as the main conspirator who, for his evil desires, roped in
C Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) and John Pandian (A-7). It is the case of the prosecution that he contacted John Pandian (A-7) who was allegedly a powerful leader of a political party and was resident of Tirunelveli. In terms of the conspiracy, ultimately, John Pandian (A-7)
D arranged the hired assassins, namely, Kumar Vellaichami (A-9), Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11) and that is how, ultimately, a plan was made for the elimination of Vivekanandan (deceased) from this world. It would be, therefore, necessary to find as to whether any conspiracy of this nature at all was there. It will be a further endeavour to find
E out as to whether the present appellants Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) and John Pandian (A-7) were the conspirators and whether the prosecution has been able to prove them as such. Voluminous evidence has been laid and all the loose-ends have been tried
F to be tied together for establishing that, firstly, there was a conspiracy and secondly, these appellants including Venkatraman (A-1) were the conspirators.

38. The strongest circumstance in support of the existence
G of a conspiracy appears to be the fact that the three totally unknown persons to Vivekanandan (deceased) went all the way from Palayamkottai/Tirunelveli and without any rhyme or reason, fatally assaulted Vivekanandan (deceased). Indeed the only inference which is possible is that the three assailants were hired
H to act as the assassins of Vivekanandan (deceased). There is no other inference possible. Inspite of a very devoted

investigation, there is no nexus established between Kumar Vellaichami (A-9), Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11) on one part and Vivekanandan (deceased) on the other. He was not known to them. He had got nothing to do with them nor was there any enmity, any rhyme or reason for these three assailants to come all the way from Palayamkottai/ Tirunelveli and to murderously assault Vivekanandan (deceased). It must have been, therefore, a plan, for execution of which the three assailants did what is alleged against them. But, that would not be sufficient. The charge of conspiracy under Section 120B IPC was framed against original accused Venkatraman (A-1), (A-2), Subramaniam (A-3), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) and John Pandian (A-7) and original accused Kumar Vellaichami (A-9), Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11) to prove the motive behind the murder of Vivekanandan (deceased), which drew these accused persons together to conspire for causing murder. The prosecution in the first batch examined Krishnaraju Kalingarayar (PW-1), Abhirama Vishnu (PW-2), Sunitha (PW-3), Ram Ganesh (PW-5), Sivakumar (PW-6), Elango (PW-7) and Krishnaraj (PW-10). Out of these, Krishnaraju Kalingarayar (PW-1) and Abhirama Vishnu (PW-2) are the relatives, namely, the father and brother of Vivekanandan (deceased) respectively, while Sunitha (PW-3) is his wife. Krishnaraju Kalingarayar (PW-1) spoke about the relationship and the friendship of Vivekanandan (deceased) with the other witnesses. The father also spoke about the fact that Vivekanandan (deceased) and Sunitha (PW-3) fell in love with each other and got married. Similar is the evidence of Abhirama Vishnu (PW-2). Sunitha (PW-3) spoke about the thickness of friendship, as also her love affair with Vivekanandan (deceased). She has spoken about the other friends of Vivekanandan (PW-3) including Venkatraman (A-1). She has also referred to Venkatraman's so-called affair with a girl Sherry. She has also referred to the fact that Venkatraman (A-1) was feeling lonely on account of Sherry having abandoned him and gone abroad and that Venkatraman (A-1) used to be upset and dejected. She then referred to his

A B C D E F G H

A frustrated efforts to bring back Sherry from Thiruvananthapuram. She also referred to a divorce case between Venkatraman (A-1) and that girl. She further referred to a help that he gave when she with her husband shifted to the new house and about the fact that he offered his company telephone No. 211558. She has
B indirectly referred that Venkatraman (A-1) used to yearn for her. She has also referred to the fact that Venkatraman (A-1) had proposed to her though he knew that she was going to marry Vivekanandan (deceased). In her Examination-in-Chief itself, she referred to the interrogation by the police. She said that she
C did not know whether the police had looked into their marriage album, though she admitted that police had asked for the same. She also admitted that she had given the same to her father-in-law. Very surprisingly, there is very little or no cross-examination of Krishnaraju Kalingarayar (PW-1), the father of Vivekanandan
D (deceased) and Abhirama Vishnu (PW-2), the brother of Vivekanandan (deceased) on the question of the photograph. It must be remembered at this juncture that the photograph which the police found from the Taxi driven by Ganesan (A-8) was the cut photograph from the marriage photograph of Sunitha (PW-
E 3) and Vivekanandan (deceased) and it was on that basis, defence tried to prove with the prosecution that the common photograph of Sunitha (PW-3) and Vivekanandan (deceased) was neatly cut into two parts. While Sivakumar (A-2) kept the photograph of Sunitha (PW-3) with him, the photograph of Vivekanandan (deceased) was found in the taxi with Ganesan
F (A-8). It was tried to be suggested by Shri Senthil Jagadeesan, learned Counsel for the appellants that the marriage photograph was supplied by Sunitha (PW-3) and it was police which cut it into two parts and planted the same in the taxi of Ganesan (A-8). The theory must fall down immediately for the simple reason
G that the other part of the photograph is alleged to have been seized from the house of Venkatraman (A-1). Had the police taken the photograph from the marriage album, they could not have planted the other half in the house of Venkatraman (A-1).

H 39. The other witnesses are Veerendrakumar Gupta (PW-

4) and Ram Ganesh (PW-5). He referred to the fact that Venkatraman (A-1) had become a little upset on account of the decision of marriage between Sunitha (PW-3) and Vivekanandan (deceased). He also asserted that even after the marriage, Venkatraman (A-1) used to move closely with Vivekanandan (deceased) and Sunitha (PW-3). There is nothing in his cross-examination to refute his claim that Venkatraman (A-1) had become upset after hearing about the proposed marriage of Vivekanandan (deceased) and Sunitha (PW-3). Sivakumar (PW-6) is also one of the friends of the couple and spoke about Venkatraman (A-1) being close to the couple and moving together with them. Elango (PW-7) is another witness who was friendly with the couple. He has referred to a peculiar fact that immediately after the murder, he, Sunitha (PW-3) and Venkatraman (A-1) were on the spot and he told Venkatraman (A-1) to send for the vehicle to take Sunitha (PW-3), on which Venkatraman (A-1) had said that people would mistake (misunderstand). There was no reason for Venkatraman (A-1) to feel so. This claim could not be demolished in the cross-examination, though specific questions were put about this subject. Venkatachalam (PW-9) was doing a business of screen cloths (tapestry). He spoke about Venkatraman (A-1), Vivekanandan (deceased) and his wife (Sunitha) having come to his showroom for selecting cloth of curtains. He asserted that the bill was paid in parts by Venkatraman (A-1), though after about 2-3 months. The reason why Venkatraman (A-1) paid for the curtains is obvious. Probably Venkatraman (A-1) wanted to impress Sunitha (PW-3). There is no cross-examination on this vital aspect. The last witness in this group is Zakria (PW-10), who was the classmate of Venkatraman (A-1). He specifically asserted the same story like the other witnesses. The witness has also referred to the conversations with Venkatraman (A-1). He said that during those conversations, Venkatraman (A-1) used to say that Vivi (Vivekanandan) must be lucky to have a girl like Sunitha (PW-3) and that if only Vivi (Vivekanandan) had not been there, he would have tried and married Sunitha (PW-3). He has also referred to the love affair of Venkatraman (A-1) with

A B C D E F G H

A Sherry and the fact that she abandoned him and got married to the person of her own community. The witness has also referred to the efforts made by Venkatraman (A-1) by going to Thiruvananthapuram and showing his marriage certificate to the pastor of a church there, whereafter the pastor said that it was
B only a marriage agreement, meaning thereby that it was not a valid marriage certificate. The witness then referred to the fact that a record was created as if the marriage had taken place at his residence at Tirupur, where Vivekanandan (deceased) signed as first witness and he has signed as second witness.
C What transpires from his evidence is that he was very close both to Venkatraman (A-1) as well as to the deceased. It has also come in his cross-examination that he and Vivekanandan (deceased) used to advise Venkatraman (A-1) not to be upset and get married, on which Venkatraman (A-1) used to express
D that there was no new girl in his life. He has also referred to the fact that before the marriage of Vivekanandan (deceased), Venkatraman (A-1) used to say that if only Vivi (Vivekanandan) had not been there, he would have tried and married Sunitha (PW-3). There can be no dispute that this witness was very close
E both to Vivekanandan (deceased) as well as to Venkatraman (A-1), so much so that he had gone to the extent of creating record suggesting the marriage between Venkatraman (A-1) and Sherry. It has further come in his cross-examination that even before he had prepared the documents showing the marriage between Venkatraman (A-1) and Sherry, they were already
F married. It has further come that Venkatraman (A-1) had told him that the documents were prepared changing the name as though the marriage had taken place at his residence. All this proves the proximity of relationship between the witness and Venkatraman (A-1). There can be no dispute, therefore, that
G Venkatraman (A-1) was madly in love with Sunitha (PW-3). He had also offered to Sunitha (PW-3) for marriage, but his offer was not accepted; instead Sunitha (PW-3) got married to Vivekanandan (deceased) after which Venkatraman (A-1) started feeling dejected and upset, so much so that he expressed

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that if only Vivi (Vivekanandan) had not been there, he would have tried and married Sunitha (PW-3). From all this evidence, it is obvious that Venkatraman (A-1) was a frustrated soul, particularly after he broke with Sherry who had abandoned him and got married to the person of her own community and gone abroad. Venkatraman (A-1) was in the disturbed emotional state as has rightly been inferred by the prosecution. The clueless assassination of Vivekanandan (deceased) when read with this evidence suggests that this yearning on the part of Venkatraman (A-1) for Sunitha (PW-3) was a driving force behind the motive to eliminate Vivekanandan (deceased).

40. The other circumstance against this accused was his suspicious behaviour after the murder. He had kept an amount of Rs.3.97 lakhs in the Laxmi Vilas Bank, Thirupur from 16.7.93 to 30.7.93 as per the evidence of PW-24, Krishamurthy. The prosecution tried to say that this amount was deliberately kept. It was from this account of Thirupur Branch that cheque No.162883 dated 30.7.93 for Rs.3 lakhs was encashed. That was signed by Venkatraman (A-1). It was a self cheque and was brought by Sivakumar (A-2). Sivakumar was identified by Krishnamurthy (PW-24). The cheque was proved as Exhibit P-24. Sivakumar's signatures were proved at Exhibit P-25. It was, therefore, alleged that Venkatraman (A-1) gave Rs.3 lakhs to Sivakumar who was a mere office boy by signing a self cheque. The prosecution claims that substantial amount of over one lakh rupees was found with Sivakumar when he was arrested after the murder. We will consider all this at the time when we consider the case of Sivakumar (A-2). Presently, it is sufficient to show that Venkatraman (A-1) who was the Mill owner had got one cheque encashed through a mere office boy like Sivakumar (A-2). Some other evidence was that Elango (PW-7) had suggested to this accused to send for the vehicle to take Sunitha in his car when the accused is said to have said that people will mistake Sunitha in his car. Thereafter, he got into another vehicle and left. The prosecution suggested that this suggested the mind of Venkatraman (A-1).

A 41. Lastly, the evidence of PW-27, Manoj Kumar was tendered. He was the friend of Venkatraman (A-1) and the whole group. He deposed that on 17.8.93 he came to know about the murder of Vivekanandan. He also attended his funeral and stayed in his father-in-law's house at Kurichi. He was examined B by the Inspector after three days. He claims that at 12 O' Clock in the midnight Venkatraman (A-1) had phoned up to his residence when Venkatraman (A-1) agitated and complained that a girl calling herself to be Sunitha had telephoned him and abused him in English saying that he alone killed Vivekanandan C and thereafter the girl hanged up the phone. Venkatraman (A-1) requested this witness to telephone Sunitha and ask as to whether she telephoned him. The witness expressed his inability to telephone at the dead of night and promised that he would talk to Sunitha in the morning. He ultimately gave a promise to Venkatraman (A-1) that the matter would be enquired on the next D day. It is the claim of this witness that after about half an hour, Venkatraman (A-1) came to his house himself and at that time he was pale and sweaty and asked him to telephone and ask Sunitha. Manoj Kumar again convinced him that no contact should be made in the night. In his cross-examination it has come E that when Vivekanandan decided to marry Sunitha, Venkatraman had become very upset. Some minor omissions were pointed out from his cross-examination that he had not used the word 'upset' in the police examination. He admitted in the cross-examination that Venkatraman had telephoned on the next day F after the Police Inspector examined him. Now this is a mistake committed by the witness because in the examination-in-chief his claim was that it was on the same night that Venkatraman had telephoned him. Be that as it may, all this suggests that Venkatraman (A-1) was extremely disturbed. The contradiction G is of no consequence as to whether the telephone call was made in same night or after three days. There has been no cross-examination to suggest that there was no telephonic call or meeting of Venkatraman with this witness. We, therefore, accept the evidence of this witness to the extent that Venkatraman (A-H 1) had insisted upon telephoning Sunitha and asking her whether

she had telephoned him and further that he was extremely agitated so as to visit the witness, Manoj Kumar (PW-27) in the dead of night. All this lends support to the theory that Venkatraman (A-1) was very closely connected with the whole affair. However, the question would still be as to whether Venkatraman (A-1) had conspired with Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) and John Pandian (A-7) to eliminate Vivekanandan from this world.

42. Before we go to consider the case against the other accused it will be better to see the role played by John Pandian (A-7). As per the prosecution case, he was the main link besides Venkatraman (A-1). The prosecution pleaded that Venkatranam (A-1) contacted John Pandian (A-7) through Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) and, more particularly, through Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) one of whom knew John Pandian (A-7). It seems to be the prosecution case that through these three accused persons Sivakumar (A-2) also contacted John Pandian (A-7) and it is on account of this that John Pandian (A-7) ultimately arranged the killers Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11). We have very closely checked the evidence against John Pandian (A-7). The case of the prosecution is that though Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) travelled to Madurai and possibly further to Tirunelveli they could not contact John Pandian (A-7) and came to know that he had already gone to Chennai and, therefore, they proceeded to Chennai perhaps to contact him. Gonsaluez (PW-20) is the Railway Officer. He proved Exhibits P-14 and P-15. Exhibit P-14 is the railway reservation request form and Exhibit P-15 is the reservation Chart for S2 coach. Cyril Raj (PW-21) proved Exhibits P-16 and P-17. Exhibit P-16 is the railway reservation requisition and Exhibit P-17 is the reservation chart of S1 coach. It is apparent from Exhibit P15 that the reservation chart for sleeper class that on 17.7.1993 Tamil Selvan Abdul Karim, Sivakumar and Yusuf travelled from Coimbatore to Madurai. The reservation slip also suggests that these four, namely, Abdul

A Karim, Yusuf, Sivakumar and Tamil Selvan had travelled. It is clear from another document that on 19.7.1993, four persons bearing these very names travelled from Madras Central to Coimbatore. From this the prosecution alleged that firstly these four persons went to Madurai and probably from there they went to Tirunelveli
B and stayed in a hotel called Blue Star. These two witnesses were cross-examined. However, nothing could be brought from their cross-examination. But the witness was not able to identify any of the accused. He went to the extent of saying that he did not even know the Clerk who filled up the reservation form. The
C railway application seems to have been singed by A-2, Sivakumar.

43. PW-42, R. Srinivasan is the hand writing expert who proved Exhibit P-14. This witness deposed that the train ticket reservation form (Exhibit P-14) the signature on the cheque
D (Exhibit P.25) dated 30.7.1993 drawn on Laxmi Vilas Bank (Exhibit P-24), further the railway ticket reservation form (Exhibit P-16) dated 19.7.1993 as also attendance register in Jankiraman Hotel in Tirunelveli (Exhibit P-20), further the carbon copy of the cash receipt No.35354 Exhibit P-21 which was
E issued by the hotel dated 18.7.1993 and Exhibit P.26 which was the attendance register at page 48 dated 1.8.1993 pertaining to hotel Blue Star, Tirunelveli vide Exhibit P-27. He examined these signatures which were all made by Sivakumar (A-2). He also claimed to have examined the other documents which were
F Exhibit P-29 the attendance register of New Vijaya Lodge, Coimbatore allegedly bearing the signature of John Pandian (A-7) as also the attendance register of Arthi Lodge, Ooty and Sudarshan Lodge, Udumalpet. These documents were alleged to be bearing the signatures of John Pandian (A-7). According
G to him he compared all these documents with the specimen signature of Sivakumar and the signatures of Tamil Selvan @ Ubaiadulla. Ubaiadulla's signatures were found in pages of Minutes Book of Coimbatore Dravida Kazhagam Youth Wing. In his evidence, he also examined the specimen signatures of
H Venkatraman (A-1) and the specimen signature of Pavunraj. In

his evidence he claimed that the signatures marked as Exhibit P-14, the reservation slip marked as Exhibit P-24 the cheque and the hand writing marked as S1 to S7 and A-1, were written by Sivakumar (A-2). S1 to S4 pertained to standard signatures of Sivakumar. He, however, deposed that there was a possibility for the same persons writing the document marked Q1 which was the reservation slip Exhibit P-14. Similarly in respect of Tamil Selvan also he gave the opinion that the handwriting marked as S8 to S14 and signatures B1 to B8 as also signatures Q5, Q8, Q9, Q11 and Q12 were written by him. He also suggested the possibility of the same person writing Q4, Q6, Q7 and Q10. It will be seen that Q5, Q6, Q8 pertain to Jankiraman Hotel, Tirunelveli while Q10 pertained to Blue Star Hotel Tirunelveli. Again Q12 is the signatures on the carbon copy of receipt No. 72250 (Exhibit P-27) while Q13 is signatures on the cheque bearing No.162883 dated 30.7.93 which is proved to have been in his handwriting. He has not spoken about John Pandian (A-7) or his alleged writing.

44. On this backdrop when we see the evidence of K.P. Rajan (PW-18) and the documents proved by him being Exhibit P-8, P-9, P-10, P-11 and P-12. Exhibits P-11 and 12 pertained to marked portion of visitors' book dated 18.7.93 where he is shown to be staying in MLA's room. Exhibit P-11 and 12 also show his name which receipts pertained to dates 27.7.1993 and 24.7.1993, respectively. In his evidence he claimed to be working as a Joint Secretary in the MLA's hostel in the year 1993. He claimed from the documents Exhibit P8 and 9 that room No.40 was allotted for five days to one S. Bhaskar who was the guest of Thiru Se.Ku. Thamizharasan, MLA. He also deposed on the basis of Exhibit P-9 which is visitors register that one Visu had come to visit John Pandian while one M. Kumar had come to meet John Pandian on 27.7.1993. Again on 27.7.1993 one P. Mani had come to visit John Pandian. In his cross-examination he admitted that he was not directly aware of the entries made in the register. Be that as it may, this witness has neither identified John Pandian earlier as there was no

A identification parade held in case of John Pandian nor has he identified him even in the Court. We are not in a position to hold as to how the mere name of John Pandian could be connected with John Pandian (A-7) as nobody identified him. If there were entries of the persons visiting John Pandian, none of them
B pertained to Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6), which was the case of the prosecution. The investigating agency has done nothing to get John Pandian idenfied at least through the Receptionists who worked in the MLA's house during the relevant period. It has come that the
C visitor was seen by watchman. No such watchman was examined nor was John Pandian got identified by such a watchman. The witness drew complete blank as to who was the watchman on duty. Those records were also not seized. Therefore, the oral evidence of this witess or the contents of
D Exhibit P8 to 12 do not connect John Pandian. Therefore, it cannot be presumed that Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) either went to or met John Pandian in MLA's hostel. Merely because it is proved that they travelled from Madurai to Madras in a train. The prosecution
E wanted to suggest that accused Nos. 5 and 6 belonged to PMK party and they had accepted this in their examination under Section 313, Cr.P.C. There is an admission by Yusuf (A5) and Abdul Kareem (A-6) that they had known John Pandian A-7 since A-7 was the State Youth Wing Secretary of PMK. It was tried to be suggested that acquitted Ganesan (A-8) was a person of
F confidence of John Pandian (A7) and that is why he went to the police station when Ganesan (A-8) was arrested. Similarly, it was suggested that Kumar (A-9) was John Pandian (A7)'s man and both of them knew each other. In all these circumstances the prosecution relied on the answers given by the accused persons
G in their Section 313 Cr.P.C. examination. The law in this behalf is very clear. The examination of the accused cannot be dissected so as to rely on the inculpatory part and ignore the exculpatory part. The examination of the accused has to be read as a whole. It is very difficult to nail John Pandian (A7) merely on
H the basis of the answers given by Yusuf (A5) and Abdul Kareem

(A- 6) that they knew John Pandian A-7 or that Kumar (A-9) and Pavunraj (A-10) knew A-7. Even if it is presumed that Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) stayed in Jankiram Hotel or Blue Star Hotel and even if it is presumed that they travelled from Tirunelvi to Madras and further even if it is presumed that John Pandian (A-7) went for the rescue of Ganesan (A-8), the acquitted accused, when he was put behind the bar on account of loss of a car bearing No. TAC 5667 Exhibit P34 it is not enough to connect John Pandian (A-7) effectively with the other accused persons. There is simply no evidence of any nexus between Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) on the one hand and John Pandian (A-7) on the other. The only other evidence which was very heavily relied upon was the evidence of PW-39 Mohd. Rafi a telephone operator who claimed that he was running the telephone booth at Ukkadam with booth No. 30893. He claimed to have a computerized billing system. He proved the record of the telephonic calls made from that booth from 31.7.93 and proved Exhibit P-53. Very significantly this witness was not even able to identify any of the accused persons. When we see Exhibit P-53 it seems that few calls were made from his booth No, 72324 of Tirunelveli. This by itself does not take us anywhere either to connect Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) independently or their connection with John Pandian (A7). After all John Pandian A-7 was claimed to be belonging to a political party. Merely because some calls were made to his house that will not go to establish that only Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) made those calls and the calls were in respect of the conspiracy.

45. Two other witnesses, namely, Shanmugasundaram (PW-30) and Sabeer (PW-34) were examined by the prosecution in respect of the talks of Sivakumar (A-2) and Ubaiadulla (A-4) with John Pandian (A-7). Shanmughsundaram (PW-30) was doing business of buying and selling sacks in Big Market, Ukkadam. He identified Sivakumar (A-2), Yusuf (A-5)

A and Abdul Kareem (A-6). He also deposed that a leader of Dravidar Kazhagam from Kuniamuthur used to come whose name was Sivakumar and they used to be talking to each about something. He claimed that they usually go to STD booth and make calls and also deposed that he had heard there was some B problem between the owner of Vijayalaxmi Mills and another person who was running finance business at R.S.Puram [probably the deceased]. He flatly refused to have been examined by the police Inspector. In his cross-examination he admitted that he was an accused in a murder case and that when C he was examined by the police Inspector he was a member of Hindu Munnani. He also admitted that Hindu Munnai and Dravidar Kazhgam differed with each other on their policies. He did not have any documentary proof to suggest that he was a resident of Multhuvinayagar Street or residing at House No.52. D He admitted that he had no account for purchasing and selling. On the whole, the evidence of this witness does not inspire confidence at all.

46. The other evidence is that of PW-34, Sabeer. He was running a mango fruit shop at Ukkdam. He claimed that he did E not know anything about the case. He also identified Kareem (PW-6) and Yusuf (PW-5) who used to come to his shop for buying the fruits. He was declared hostile. There is nothing in his cross-examination which would give credence to the prosecution case. Therefore, even if it is presumed that some calls were F made from Ukkadam telephone booth to the telephone number of John Pandian (A-7) that by itself will not prove that the calls were made only by Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6). All the evidence, therefore, when we consider, does not connect John Pandian (A-7). It could at the G most raise suspicion. However, the law is clear that howsoever strong the suspicion may be, it cannot take place of the proof required to convict the accused.

47. We are quite in agreement with Shri Ramamurthi, learned counsel appearing for the State that the evidence of H

conspiracy is very hard to be found and the prosecution would always have a great difficulty in proving the conspiracy and, therefore, the conspiracy has to be inferred. There can be no doubt that there was a conspiracy to eliminate Vivekanandan from the scene and from this world. However, again the question remains as to whether there is sufficient evidence to connect John Pandian (A-7) with the conspiracy itself. One must realize that if no connection is established with John Pandian (A-7) excepting for a few phone calls from Ukkadam to his house and the fact of Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5), Abdul Kareem (A-6) travelling from Coimbatore to Madurai and from Chennai to Coimbatore it does not connect John Pandian (A-7) successfully. We have said that could be the case of suspicion. Further no effort has been made by the prosecution to identify John Pandian (A-7). He could have easily been identified by the staff at MLA's hostel. For some mysterious reasons that was not done. There could have been some evidence to suggest that he had some nexus with Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11). Even the evidence in that behalf is far from being satisfactory. Under these circumstances, even if the trial Court and the High Court have found John Pandian (A-7) to be a conspirator it will be extremely difficult to hold him so. We therefore, proceed to grant him benefit of doubt.

48. We will next take the case of A-5, Yusuf @ Abdullah Yusuf. There is hardly any evidence against him which can brand him as a conspirator. It was suggested that he was friendly with other accused, namely, Sivakumar (A-2), Ubaiadulla (A-4) and Abdul Kureem (A-6). He has been brought into the dragnet on the basis of his name being found in Exhibits P-14, P-15, P-16 and P-17. While in Exhibit P-15 it is shown that one Abdullah Yusuf, male, 25 years of age travelled from Coimbatore to Madurai, in Exhibit P-17 the name has been shown as Yousuf. What the prosecution has been contending is that the four persons, namely, Sivakumar (A-2), Ubaiadulla @ Tamil Selvan (A-4), Yusuf (A-5) and Abdul Kareem (A-6) travelled together. It is significant that this accused, like the other friends of him like

A Sivakumar (A-2), Ubaiadulla (A-4) and Abdul Kareem (A-6) was never put up for identification. If the prosecution alleged that he stayed at the Sri Jankiram Hotel or Blue Star Hotel, he could have been got identified by the staff of those hotels. That was not done. The travels, even if accepted, do not connect him with the B conspiracy at all as it could be for any purpose. This is apart from the fact that no attempt was made to identify him even by the railway staff of the train in which he travelled. Gansaluez (PW-20) and Cyril Raj (PW-21) have not identified him even in the Court. The only other evidence against him is by C Shanmugasundaram (PW-30) who was a vendor, Sabeer (PW-34) who was also a small fruit vendor in Coimbatore and Mohd. Rafi (PW-39) who was the STD booth owner. It was claimed that he along with other accused, namely, Sivakumar (A-2), Ubaiadulla (A-4) and Abdul Kareem (A-6) made calls from the D STD booth of PW-39, Mohd. Rafi. That is all the evidence against this accused. We have already shown that the evidence of Shanmugasundaram (PW-30) does not inspire any confidence. All that he has said is that Sivakumar (A-2), Yusuf (A-5) and Kareem (A-6) used to go the STD booth and make calls. There is nothing suspicious about that. After all there could have been E hundred other reasons to make calls. We are again not impresses either by his evidence that he has said that Sivakumar (A-2) was the leader of Dravidar Kazhagam who was from Kuniamuthur. Barring this witness, nobody has made such a tall claim. We see that both the Courts below have found his evidence F to be truthful. However, we do not approve of the stand take by the two courts below on his evidence. Similarly, Sabeer (PW-34) who knew this accused as allegedly this accused used to purchase fruits from him. Beyond that, Sabeer has said nothing. He was declared hostile and there is nothing in his cross-G examination. PW-39 Mohd. Rafi also did not say that this accused used to come and make calls. Beyond proving the call register there is nothing much in the examination of this witness. In that view, it is difficult to see any role much less important role being played by this accused in furtherance of conspiracy H excepting the fact that he moved along with other accused

persons. There is nothing to suggest that he had any nexus with the so-called conspiracy for eliminating Vivekanandan. He had no enmity with Vivekanandan. These travels along with the accused cannot be said to be the links or prove any part of the conspiracy alone. His travels could have been for various other reasons. We do not approve of the finding of the trial Court and the appellate court that on the basis of this evidence this accused could be roped in the conspiracy. Shri Ramamoorthy tried to justify his conviction. However, we are not at all impressed by the prosecution case. He, therefore, deserves acquittal.

49. Next we will consider the case of A-6, Abdul Kareem @ Kareem who is described as Hareem also. Again, his participation in the conspiracy is tried to be proved from the railway travels and mentioned in Exhibits P-14, P-15, P-16, P-17 and also by witnesses PW-20, Gonsaluez and PW-21, Cyil Raj. We are not at all impressed by that substance, as we have held earlier. PW-23, Ram Kumar was the witness who been examined to suggest that this accused stayed in Jankiram Hotel. It was through him that Exhibits P-20, P-21 and P-22 were got proved. He deposed that one N. Thamizhselvan of Coimbatore had come and stayed on 18.7.1993 and there were four other persons along with him and they had taken two rooms, being Room Nos. 409 and 407. What is significant is that it is claimed that from room No.409 telephone calls were made to the local number 72324 which was the telephone number of John Pandian (A-7). We would have been impressed by this evidence if this witness had at least in the Court identified any of the accused, namely, Tamil Selvan @ Ubaiadulla, A-2 Sivakumar and this accused. What is significant to note is that according to this witness there were five persons in all but who the fifth man was not established at all. We have seen Exhibits P-20 and P-21. They do not in any manner connect this accused or for that matter even Sivakumar (A-2) and Ubyadullha (A-4). He was similarly tried to be roped in by Shanmugasundaram (PW-30), Sabeer (PW-34) and Mohd. Rafi (PW-39). We have already rejected

A their evidence. PW-26 was Ramasubramaniam who spoke about the stay of Tamil Selvan (A-4). However, though it was the prosecution case that Tamil Selvan was accompanied by other accused persons, he said nothing about the others nor did he even identify Tamil Selvan in the Court. Even this accused was
B not put up for identification by Ramasubramaniam (PW-26) or by Ram Kumar (PW-23). The only other witness posed against him is PW-38, K. Veerasamy who acted as the mahazar witness. According to this witness, this accused had discovered Rs.18,000/-, two sovereigns gold chain and a scooter. He
C proved Exhibit P-45. The seizure memo is Exhibit P-48. In our opinion, this discovery would be of no consequence whatsoever unless material objects discovered are connected to the crime in any manner. Nobody deposed as to who had paid money to this witness nor has it been brought on record that it was he who
D purchased the so-called gold chain and the scooter and even if he has, the prosecution has miserably failed to show that the money passed to him was only from Venkatraman (A-1) via Sivakumar (A-2). Therefore, on the basis of discovery, it will be extremely risky to book this accused and hold him a member of the conspiracy. It must be said that all these aspects were viewed
E by the trial and the appellate Court with jaundiced eyes. Merely because there are some discoveries they do not in any manner connect the accused and there is no presumption that merely because the accused has some things in his possession, which he fails to explain, therefore, all this money and the gold chain
F must have come only on account of the money that he had allegedly received as a member of the conspiracy from Sivakumar (A-2). In our opinion, this evidence would fall short to hold that he was a member of the conspiracy. This may, at the most, raise suspicion against him but that would be completely
G without any justification. This accused would, therefore, has to be given the benefit of doubt.

50. Our comments against Yusuf (A-5) and Abdul Kareem (A-6) would equally apply to Ubaiadulla @ Tamil Selvan (A-4).
H We have already commented that we are not impressed by the

travels made by this accused alongwith the other three accused persons, namely, Sivakumar (A-2), Yusuf (A-5) and Abdul Kareem (A-6). We have extensively commented on the evidence of Gonsaluez (PW-20), a Railway Officer, Cyril Raj (PW-21), another Railway Officer, Ram Kumar (PW-23), who was the owner of Jankiraman Hotel and Ramasubramaniam (PW-26), who was the owner of Blue Star Hotel. None of these witnesses have identified Tamil Selvan (A-4). In fact, much stronger evidence is expected in respect of this person who is said to be the author of the entries in arrival register of Blue Star Hotel, Tirunelvelli vide Exhibit P-26. However, this accused was neither identified by Ram Kumar (PW-23) even in the Court nor was he put up for identification parade. Shri K. Ramamoorthy, learned Senior Counsel, very heavily relied on the evidence of R. Srinivasan (PW-42) to suggest that it was proved that the entries in Blue Star Hotel were in the handwritings of this accused. That may be so. The evidence of a handwriting expert is not be all and end all of the matter. Where the witness had seen the accused, it would have been much better had he been put up for identification parade and identified by the witness or at least had he been identified by the witness in the Court. In fact Mr. Anand, learned Counsel for Ubaiadulla @ Tamil Selvan (A-4) very seriously contested the claim of the prosecution that this accused was also known as Tamil Selvan. We do not see as to why Ubaiadulla, obviously being a Muslim gentleman, should have taken a name of Tamil Selvan. There is no evidence led on behalf of the prosecution to support that he was also known as Tamil Selvan. Prosecution could have led some evidence, but that was not done. Insofar as the evidences of Shanmugasundaram (PW-30) and Mohd. Rafi (PW-39) are concerned, we have already rejected them.

51. Shri Ramamoorthy, learned Senior Counsel further relied on the evidence of Francis @ Chellakili (PW-31) to suggest that the Inspector of Police had seized the minute book dated 26.7.1992 vide Exhibit P-30 and Exhibit P-31 dated 22.7.1992. The witness claimed himself to be the Deputy

A President, District Youth Wing of Dravidar Kazhagam and suggested that vide those resolutions dated 22.7.1992 and 26.7.1992, it was resolved to convene a conference at Madurai and to do some other activities like conducting a cycle procession on the eve of Periyar's birth anniversary. He B suggested that one Tamil Selvan had signed in the resolutions. The witness has not even identified Ubaiadulla @ Tamil Selvan in the Court. This accused was not even put up for identification parade at the instance of Francis @ Chellakili (PW-31). He, in his cross-examination, very specifically stated that there was no C person named Tamil Selvan amongst the accused persons and that the one whom he was referring to, hailed from Vellanur. In fact, the same evidence was given when he was re-examined. In his re-examination, he spoke about Sivakumar (A-2). The very fact that the witness has not been able to identify either D Sivakumar (A-2) or Ubaiadulla @ Tamil Selvan (A-4) in the Court, speaks about the brittle quality of his evidence. We are not at all convinced by this claim.

52. L.H. Krishnan (PW-55) claimed that he took specimen handwritings of Sivakumar (A-2) and Ubaiadulla @ Tamil Selvan E (A-4). It is claimed by Mr. Ramamoorthy, learned Senior Counsel that he was asked to write the word "Tamil Selvan" five times. R. Srinivasan (PW-42), in his evidence, has referred to the handwriting of Tamil Selvan and claimed that the ticket reservation form (Exhibit P-16) was allegedly singed by M. F Thamizhselvan (Tamil Selvan). Similar entry was made in the attendance register of Jankiram Hotel vide Exhibit P-20 and the cash receipt (Exhibit P-21), as also the attendance register of Blue Star Hotel (Exhibit P-26) and the carbon copy of receipt (Exhibit P-27) were compared with the admitted specimen G signatures of Tamil Selvan. In his opinion, Exhibit P-16 marked as Q5, Exhibit P-20 marked as Q8, Exhibit P-21 marked as Q9, Exhibit P-26 marked as Q11 and Exhibit P-27 marked as Q12 were written by him. As regards the rest, there was a possibility of the same person having made the handwritings. From this, H Shri Ramamoorthy urged that the presence of this accused in

Jankiram Hotel and Blue Star Hotel was established and, therefore, it was clear that not only had this accused travelled, but had also arranged for the reservations etc. and had taken an active part in staying with the other accused persons in Jankiram Hotel and Blue Star Hotel. We have already commented on the travel aspect. That does not impress us at all. But even if it is held that Tamil Selvan had reserved and that it was Tamil Selvan whose admitted handwriting tallied with that handwriting, it may, at the most, prove the presence of Tamil Selvan in those Hotels. In our opinion, that is not sufficient to rope him in the conspiracy. The established law is that every such circumstance, which is relied upon by the prosecution for establishing conspiracy, must be proved to have nexus with that conspiracy. In the absence of any convincing evidence, merely because the accused travelled together with others and he stayed in those two Hotels, it cannot be said that it was in order to perpetrate a conspiracy. We have already expressed our doubts regarding his identification. In the absence of his identification, even if these handwritings go to prove his presence, that may, at the most, raise a suspicion against the accused, which in our opinion, is not sufficient. He is said to have discovered a Titan watch vide M.O. 11 and cash vide M.O. 12. We do not see as to how any of these material objects can be connected with the conspiracy. No evidence has been brought on record to suggest that he could not have Rs.23,000/-. The evidence of discovery is again a weak kind of evidence and this Court, on a number of occasions, has refused to rely solely on the discovery evidence. There is nothing brought on record suggesting that these 23,000 of rupees were paid to him by Venkatraman (A-1) via Sivakumar (A-2). There is no connection established in between him and John Pandian (A-7) or for that matter, Kumar s/o Vellaichami (A-9), Pavunraj @ Pavun (A-10) and Prince Kumar @ Prince (A-11). In the absence of all these materials, it will be extremely risky to convict him on the basis of his being a conspirator. It was further suggested that in the arrival registers being Exhibit P-20 and Exhibit P-26 pertaining to Jankiram Hotel and Blue Star Hotel

A respectively, he gave the same wrong address as Tamil Selvan, Gandhipuram, Coimbatore. In our opinion, this is an extremely weak circumstance to book Ubaiadulla @ Tamil Selvan (A-4). We, therefore, proceed to give him benefit of doubt.

B 53. The last accused is Sivakumar (A-2). There can be no doubt that Sivakumar (A-2) was connected with Venkatraman (A-1) as he was an office boy. He was asked to get a cheque of Rs.3 lakhs encashed from Lakshmi Vilas Bank, Thirupur Branch. In his going and encashing the self-cheque, we do not see C anything suspicious, as it was his duty as an office boy to do whatever errands were asked by his master to him. Further question is as to whether these 3 lakhs of rupees were for the purpose of spending in order to fulfill the object of eliminating Vivekanandan (deceased). As is the common case, this accused also travelled alongwith others and Gonsaluez (PW-20) D and Cyril Raj (PW-21) spoke about the Railway reservation charts involving his name. Similarly, Ram Kumar (PW-23) spoke about his presence in Jankiram Hotel, so also Ramasubramaniam (PW-26) was set up to prove that he was present in Blue Star Hotel. As has been said earlier, Ram Kumar E (PW-23) or Ramasubramaniam (PW-26) have not been able to identify the accused. Anbunathan (PW-29) has tried to say something against this accused by saying that few days prior to the incident, he saw Venkatraman (A-1) in his car alongwith this accused. That claim is too general to be accepted and even if F accepted, it leads to nothing. We, therefore, reject the evidence of Anbunathan (PW-29).

54. Similar evidence by Shanmugasundaram (PW-30), Sabeer (PW-34) and Mohd. Rafi (PW-39) was led in respect of G the telephone calls from the booth of Mohd. Rafi (PW-39). We have already rejected that piece of evidence. It was suggested that the handwriting of Sivakumar (A-2) was proved on the reservation slips. Even in the opinion of R. Srinivasan (PW-42), his handwriting was there on Q2 and Q3, which are Exhibits P-24 and P-25. There can be no dispute about his handwriting on H Q3 because he was asked to encash the cheque given to him

by Venkatraman (A-1). In respect of Q1, however, which is a train reservation form vide Exhibit P-14, even handwriting expert is not so sure when he says that there is possibility of the same person writing Q1, Q2 and Q3 and S1 to S7. We are really not convinced with the evidence of handwriting expert alone, as this accused had not been identified by anybody. In fact, in comparison to the other accused persons, namely, Ubaiadulla @ Tamil Selvan (A-4), Yusuf (A-5) and Abdul Kareem (A-6), his role is greater, inasmuch as besides the common evidence, it was suggested that an amount of Rs.1 lakh was seized from him when he was arrested and, thereafter, he agreed to discover the other cash, namely, Rs.21,000/- from his house. Mere recovery of money would be of no consequence unless the prosecution comes out with a case and give some prima facie evidence that this cash was a part of the money that he had received after encashing the cheque. In fact, there is nothing to suggest that he had not given back the cash. Shri Ramamoorthy, learned Senior Counsel tried to submit that this accused should have given some explanation about this cash. We agree with this contention, however, that would be only if it was shown that this accused received this cash from Venkatraman (A-1) and that too for the purpose of success of conspiracy. The prosecution has not discharged that burden. Shri Ramamoorthy also tried to argue that this was a man of confidence of Venkatraman (A-1) being his office boy. We must, at this juncture, observe that Venkatraman (A-1) was a mill-owner and was a fabulously rich person. He had all the resources at his command. It is very difficult for us to swallow that a powerful person like Venkatraman (A-1) would take the help of some office boy in such a sensitive matter as this, where the elimination of Vivekanandan (deceased) was contemplated. This is the basic weakness in the prosecution case. Venkatraman (A-1) would have had number of opportunities to contact or to secure the services of John Pandian (A-7) even if it is presumed that it was John Pandian (A-7) who procured the services of Kumar s/o Vellaichami (A-9), Pavunraj @ Pavun (A-10) and Prince Kumar

A B C D E F G H

A @ Prince (A-11). Nothing has come up that there was any meeting of mind between Venkatraman (A-1) and Sivakumar (A-2) or that Sivakumar (A-2) agreed to take part in the conspiracy. Such agreement is a must for proving his part in the conspiracy. Further, there is nothing to suggest that Sivakumar (A-2) was so B resourceful, so as to be able to secure the services of John Pandian (A-7). He was a mere office boy. There is no doubt that there was a conspiracy to eliminate Vivekanandan (deceased), but the mere existence of the conspiracy by itself would not give rise to a further inference that Sivakumar(A-2) was a conspirator. C For that, the prosecution had to prove something positive, which in this case, the prosecution has not been able to prove.

55. Inspite of the concurrent judgment of the trial and the appellate Court in this case, more particularly, against accused Nos. 2 (Sivakumar), 4(Ubaiadulla), 5 (Yusuf), 6 (Abdul Kareem), D and 7 (John Pandian) we had to consider the evidence afresh as we are not satisfied with the appreciation of the evidence at the trial and appellate stage. We find from the judgment that the Courts below have committed an error in first holding the existence of conspiracy and proceeding on that basis and then E taking tit-bits in evidence to suggest that those tit-bits would connect the accused with the conspiracy as the conspirators. The law on conspiracy has been stated time and again by this Court. In *Major E.G. Barsay v. State of Bombay* reported in AIR 1961 SC 1762, Subba Rao, J. observed:

F

> "The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act."

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In *Halsbury's Laws of England* the definition of conspiracy is as under:

> "Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful

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means. It is an indictable offence at common law. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied or in part express and in part implied–.. and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be". A B

In ***American Jurisprudence, 2nd Edn., Vol.16, Page 129***, the following definition of conspiracy is given: C

"A conspiracy is said to be an agreement between two or more persons to accomplish together a criminal or unlawful act or to achieve by criminal or unlawful means an act not in itself criminal or unlawful ... The unlawful agreement and not its accomplishment is the gist or essence of the crime of conspiracy." D

Lastly, in celebrated case of Kehar Singh & ors. v. State (Delhi Administration) [1988 (3) SCC 609] it was observed by Jagannatha Shetty, J.: E

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. *Mere knowledge, or even discussion, of the plan is not, per se enough" (emphasis ours)* F

In the celebrated judgment of *State v. Nalini & Ors.* [1999 (5) SCC 253] S.S.M. Mohd. Quadri, J. relying upon *Van Riper vs. United States* (13 F 2d. 961) (2 nd Cir, 1926) observed: G

"When men enter into an agreement for an unlawful end, they become ad hoc agents for one another and have made a partnership in crime." H

A Other celebrated decisions on the question of conspiracy are *Yashpal Mittal v. State of Punjab* [1977 (4) SCC 540] as also the *State of Himachal Pradesh v. Krishan Lal Pradhan & Ors.* [1987 (2) SCC 17]. It has been held in *Mohd. Khalid v. State of West Bengal* [2002 (7) SCC 334] and in *Mohammed Usman* B *Mohd. Hussain Maniyar v. State of Maharashtra* [1981 (2) SCC 443] that the agreement amongst the conspirators can be inferred by necessary implication. All these cases together came to be considered in *State of NCT of Delhi v. Navjot Sandhu @ Afsan Guru* [2005 (11) SCC 600] where even the celebrated C judgments of *V.C. Shukla vs. State* [1980 (2) SCC 665], came to be considered wherein it was observed by Fazal Ali, J.:

> *"In most cases it will be difficult to get direct evidence of the agreement, but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible* D *inference of an agreement between two or more persons to commit an offence."*

56. It is significant at this stage to note the observations in *V.C. Shukla (cited supra)* wherein it was laid that in order to prove E criminal conspiracy, there must be evidence direct or circumstances to show that there was an agreement between two or more persons to commit an offence. It was further held that there must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission F of the offence and where the *factum* of conspiracy is sought to be inferred even from circumstances giving rise to a *conclusive or irresistible* inference of an agreement between two or more persons to commit an offence. Relying on that, Pasayat, J. in *Esher Singh v. State of A.P.* [2004 (11) SCC 585] observed that G the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. *A few bits here* H

and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.

57. In *Esher Singh's case (cited supra)* this Court held that the conspiracy was proved between the nine accused. A systematic role played by each accused was highlighted. Pasayat, J. in that judgment also considered the decision in *Bhagwan Swarup Lal Bishan Lal etc.etc vs. State of Maharashtra* [AIR 1965 SC 682] and observed that there is no difference between the mode of proof of the offence of conspiracy and that of any other offence. The other decisions in *State of Maharashtra v. Som Nath Thapa* [JT 1996 (4) SC 615]), *Ajay Aggarwal v. Union of India & Ors.* [1993 (3) SCC 609] as also *Mohd. Usman's case (cited supra) and Yashpal Mittal (cited supra)* were considered in that decision. The law laid down in *Ajay Agrawal's case (cited supra)* was reiterated and it was held that it is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement; (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. These decisions were thereafter considered in *Navjot Sandhu's case (cited supra)*. In *K.R. Purushothaman v. State of Kerala* [2005 (12) SCC 631] a specific observation was made to the effect that all conspirators need not take active part in the commission of each and every conspiratorial act but, mere knowledge, even discussion, of the plan would not constitute conspiracy. It was further observed that each one of the

A circumstances should be proved beyond reasonable doubt and such circumstances proved must form a chain of events from which the only irresistible conclusion is about the guilt of the accused which can be safely drawn and no other hypothesis of the guilt is possible. We respectfully agree with the law laid down
B in *Navjot Sandhu's case* and *K.R. Purushothaman's case.*

58. However, when we test the facts of this case, vis-à-vis the above parameters it has to be said that what the prosecution has proved are mere tit-bits of some circumstances. It is not possible to hold that the acts done by Sivakumar (A-2),
C Ubaiadulla (A-4), Yusuf (A-5) Abdul Kareem (A-6) and John Pandian (A-7) along with deceased Venkatraman (A-1) and the subsequent act on the part of Kumar (A-9), Pavunraj (A-10) and Prince Kumar (A-11) formed a chain of circumstances which irresistibly prove the offence of conspiracy against these
D accused persons. What was actually done by Sivakumar (A-2), Subramaniam (A-3), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) was that they travelled together between Coimbatore and Madurai they possibly stayed in Jankiram Hotel in their first stay. Then there is a missing link as to how they
E proceeded to Tirunelveli and further to Chennai. The prosecution alleged that they then contacted John Pandian (A-7) in MLA's hostel in Chennai and met him. The prosecution has drawn complete blank. They have not been able to prove that John Pandian actually stayed in MLA's hostel. A mere mention of the
F name called 'John Pandian' in the records of the MLA's hostel would be of no consequence unless this John Pandian was identified by somebody at the MLA's hostel. This undoubtedly was possible but that was not done by the investigation agency. Therefore, a very important link that Sivakumar (A-2), Ubaiadulla
G (A-4), Yusuf (A-5) and Abdul Kareem (A-6) actually met John Pandian (A-7) in the MLA's hostel is not proved. Once this link is snapped, the whole prosecution theory about the conspiracy must fall down. Even if it is presumed that these four persons were sent by Venkatraman (A-1) to contact John Pandian (A-7) there
H is absolutely no evidence that Venkatraman (A-1) in any manner

knew about John Pandian or he wanted to contact him and, therefore, he sent Sivakumar (A-2) who took the help of Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) to contact John Pandian.

59. Similar is the story regarding the stay of these accused persons at Blue Star Hotel. The staff in Jankiram Hotel and the Blue Star Hotel could have been asked to identify these four persons that they at least stayed on relevant dates. That was also not done. Shri Ramamoorthy urged very earnestly that there was no explanation given by these accused persons as to why they travelled together from Coimbatore to Madurai and from Chennai to Coimbatore. Now, there is no question of these explanations because in the first place it was not proved at all that these persons actually travelled. Even if we presume that they did travel together, that by itself reaches the prosecution nowhere. They may have hundred other purposes for travelling. A mere non-explanation as to why the accused persons made those travels by itself will not create a piece of evidence against these accused persons though that may be relevant in consideration of their participation. Further, even if it is presumed that from these accused persons money was discovered there is nothing on record that the money was given by Venkatraman (A-1) to accused No.2, Sivakumar and through him to all the other accused persons. In fact, the prosecution was extremely confused as to how much money was said to have been agreed to be paid for the murder of Vivekanadan and as to how much money was distributed. All these things completely shatter the case of conspiracy at least in so far as the Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) and John Pandian (A-7) are concerned.

60. We have already commented on the telephonic calls allegedly made. There also the prosecution has drawn complete blank. Under the circumstances, it is very difficult to hold that Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) and John Pandian (A-7) were the conspirators.

A They have to be given the benefit of about for that purpose. It is undoubtedly true that Sivakumar (A-2) who was a mere office boy was shown with the amount of Rs.1 lakh carrying with him. Now, we fail to follow as to why Sivakumar (A-2) keep on parading himself with Rs.2 lakh and how is it that on that occasion B was caught along with Rs. 1 lakh. That is apart from the fact that Sivakumar (A-2) has tried to give an explanation that it was his father's money who had received the same as his retiral benefits. We are not much on the explanation, as in our opinion, the mere possession of a lakh of rupees on his person would not take the C theory of conspiracy any further. There is another difficulty in the way of prosecution in this case. That is the acquittal ordered by the Division Bench of Ganesan (A-8) who was the taxi driver from whose taxi the photograph of Vivekanandan along with case of Rs.23,000/- was seized. Unfortunately for the prosecution, the D State has not chosen to challenge that acquittal with the result that a very important link in the conspiracy is snapped.

61. To summarize, therefore, we hold Kumar (A-9) and Pavunraj (A-10) guilty and further confirm the judgment of the appellate Court convicting them. We however, allow the appeals E filed by Sivakumar (A-2), Ubaiadulla (A-4), Yusuf (A-5) and Abdul Kareem (A-6) and John Pandian (A-7) giving them the benefit of doubt and acquit them. They shall be set to liberty forthwith unless required in any other case. Since Venkatraman (A-1) and Prince Kumar (A-11) are reported to be dead, the appeals by F them are declared to be infructuous. Before parting, we must appreciate the efforts by the State counsel Shri Ramamoorthy as also the defence counsel who have painstakingly taken us through the voluminous record of this case and helped us in appreciating the evidence.

G B.B.B. Appeals disposed of.