

## K. Ramajayam V. The Inspector Of Police (CCTV - Sec 65B Evidence Act)

**Madras High Court**

**K. Ramajayam @ Appu vs The Inspector Of Police on 27 January, 2016**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 27-1-2016**

**Referred Trial No.1 of 2015**

**Criminal Appeal No.110 of 2015**

**K. Ramajayam @ Appu ... Appellant/Accused**

**Vs.**

**The Inspector of Police,  
T-4, Maduravoyal Police Station,  
Chennai. ... Respondent**

The Referred Trial is numbered under Section 366 of Cr.P.C. to go into the question of confirmation of the death sentence awarded by the learned III Additional District and Sessions Judge, Tiruvallur @ Poonamallee in S.C.No.142 of 2013 on 21.1.2015.

The Criminal Appeal has been filed under Section 374 of the Code of Criminal Procedure, questioning the conviction and sentence imposed by the learned III Additional District and Sessions Judge, Tiruvallur @ Poonamallee in S.C.No.142 of 2013 dated 21.1.2015.

For Appellant/Accused : Mr.M.Jagadeesan  
for Mr.B.Ramprabu

For Respondent/State : Mr.S.Shunmugavelayutham,  
Public Prosecutor, assisted by  
Mr.V.M.R.Rajendran  
Additional Public Prosecutor

Reserved on  
Pronounced on  
12-1-2016  
27-1-2016  
J U D G M E N T  
P.N. PRAKASH, J.

The Reference, R.T.No.1 of 2015 is made by the learned III Additional District and Sessions Judge, Tiruvallur @ Poonamallee, under Section 366 of the Code of Criminal Procedure, seeking confirmation of the capital punishment imposed upon K.Ramajayam @ Appu, the sole accused, by Judgment dated 21.1.2015 in S.C.No.142 of 2013. The accused has independently preferred Crl.A.No.110 of 2015, challenging the conviction and sentence.

2. The case of the Prosecution culled out from the materials on record is as follows:

(a) Dhanaram (PW-1) and his deceased younger brother Gunaram were running a Pawn Broking & Jewellery Shop in the name and style of 'Balaji Pawn Brokers' at No.1, 13th Street, Sakthi Nagar, the place of occurrence.

(b) On 14.4.2012, the deceased Gunaram opened the shop around 8.00 a.m. At about 9.00 a.m. Dhanaram (PW-1) came there and after being there for some time, he left for other work. When he returned to the shop around 12.00 noon, he was shocked to see his younger brother Gunaram lying dead in a pool of blood. PW-1 raised an alarm, hearing which Sahadev Prohit (PW-2), Varadarajan (PW-3) and Selvi (PW-4), who are all adjacent shop owners, came to the spot. On information, the Police also arrived soon.

(c) On the complaint (Ex.P-1) given by Dhanaram (PW-1), John Arumairaj, (PW-28) Inspector of Police, T-4 Maduravoyal Police Station registered a case in Cr.No.491 of 2012 at 2.00 p.m on 14.4.2012 for the offences under Section 302 read with 380 IPC. The complaint (Ex.P-1) and the FIR (Ex.P-17) reached the jurisdictional Magistrate on 14.4.2012 at 7.00 p.m., as could be seen from the endorsement made therein.

(d) In the complaint (Ex.P-1) given to the Police, Dhanaram (PW-1) has stated that on 23.10.2011 when Gunaram was in the shop, someone had sprayed an anaesthetic substance, and had burgled around 935 grams of jewellery in connection with which a case in Maduravoyal Police Station Cr.No.986 of 2011 has been registered. The lost jewellery belonged to one Kalyanmal Ranka (PW-15), and he (PW-15) suspected some foulplay by Gunaram and that he must have hired a killer to do the job.

(e) Dhanaram (PW-1) was in such a state of shock that he was unable to give the details of the lost jewels to the Police. Hence, Bawarlal (PW-11), who also has a Pawn shop nearby, and is known to Dhanaram (PW-1), took stock of the items and reported that seven items weighing 48 grams were missing. When Bawarlal (PW-11) informed this, Dhanaram (PW-1) told him that from the Video recordings shown to him by the Police, it appears that the intruder has taken only the covering jewellery.

(f) John Arumairaj (PW-28) went to the scene of occurrence and in the presence of witnesses Vimal (not examined) and Muthu (PW-8), prepared an Observation Mahazar (Ex.P-18) and a Rough Sketch (Ex.P-19). Luckily for the Police, but unfortunately for the accused, CCTV cameras were installed in the shop, the presence of which has been referred to in the Observation Mahazar (Ex.P-18).

(g) PW-28 requisitioned the services of the Forensic Expert from the mobile unit of the Tamil Nadu Forensic Science Department for collection of clue materials from the scene of occurrence, namely, fresh blood collected with sponge; blood stained Bed-sheet (MO-12); yellow colour Hair Comb (MO-13); and blood stained Spectacle (MO-14) under the cover of the mahazar (Ex.P-20) in the presence of Muthu (PW-8) and Vimal (not examined). The Inspector (PW-28) noticed that the body of Gunaram was with cut injuries around his neck and the locker in the shop was found opened.

(h) Ramajayam, the Finger Print Expert came to the place of occurrence, but was not able to lift any chance finger prints therefrom. The Inspector (PW-28) requisitioned the services of Balakumar (PW-9) CCTV Camara Technician and Linges (PW-10), who had installed the CCTV cameras in the shop, with whose help the Digital Video Recorder with remote Connector (MO-2) was recovered under the cover of mahazar (Ex.P-2). The CCTV footages were viewed, which clearly showed that when Gunaram was alone in the shop, an intruder entered into the shop and after committing the murder, walked out with the jewels in the display panel. Though the face of the assailant was identifiable from the CCTV footages, yet his name and other particulars were not known to anyone. The Digital Video Recorder (MO-2) was sent to the Court of Judicial Magistrate No.II, Poonamallee and the same was forwarded to the Tamil Nadu Forensic Science Department on 7.5.2012.

(i) The Inspector (PW-28) despatched the body through Ansari (PW-19), Police Constable to the Kilpauk Medical College Hospital, where Dr.Rathinamalini (PW-16) examined the body and made entries in the Accident Register (Ex.P-6) and sent the body to the mortuary.

(j) At the mortuary, the Inspector (PW-28) conducted an inquest over the body of the deceased Gunaram and prepared the Inquest report (Ex.P-21).

(k) On the requisition of the Police, Dr.Selvakumar (PW-21) conducted autopsy on the body of the deceased Gunaram. In his evidence and in the Postmortem Certificate (Ex.P-7) he has stated as follows:

"INJURIES: (1) Oblique incised wound seen over lower part of front and side of the neck measuring 11 x 3 cm., the left side end of the incised wound is acute and lies 1.5 cm to the left of midline. The incised wound extends to the right side of the neck crossing the midline below the thyroid cartilage to a point 6 cm below the right side mastoid process. Tailing seen at this point to a length of 3.5 cm. The margins of the wound are clean cut. On front the lower end of the Incised wound lies 4 cm above the suprasternal notch. The upper border of the incised wound lies 6.5 cm below the chin.

On dissection:- The anterior neck muscles on the lower part found severed on both sides and exposed outside. The superficial blood vessels of the left side of the neck found severed. The left carotid artery found cut partially. Extravasation of blood seen in the left side supra clavicular region and lower part of left side of neck. The wound enters the left side thoracic cavity through the upper part of front of chest in the supra cavicular region. Cutting through the muscles over the left side supraclavicular region.

On dissection of Chest:- The left end of the incised wound over neck communicates with the upper part of left thoracic cavity. Lung shows a cut injury measuring 1 x 0.5 x 0.5 cm in the upper part of apical area of left lung. Left lung found collapsed. Left thoracic cavity contains 220 ml of fluid blood and 5 grms of clotted blood.

(2) Stab wound on back of outer aspect of upper part of chest. Obliquely placed; close to the posterior axillary line measuring 2 x 1 x 6 cm. The margins are clean cut and the ends are acute. The wound enters the left thoracic cavity through a stab wound measuring 1 x 0.3 cm in the intercostal space of the upper part of outer aspect of left side of chest. The stab wound communicates with the thoracic cavity in the second intercostal space. The depth of the wound is 6 cm. The direction of the wound is inwards, forwards and medially. The measurements of the wound reduces from above downwards.

(3) Incised wound obliquely placed 1.5 x 0.5 cm x Skin deep on left side of chin 2.5 cm from the midline.

(4) Incised wound obliquely placed measuring 2 x 1.2 cm x muscle deep on front of left shoulder.

(5) Incised 2.5 cm x 0.5 cm x skin deep on the left side of lower part of neck in the supraclavicular region.

(6) Incised wound 1.3 x 0.3 cm x skin deep on the left side of lower part of neck 1 cm above previous injury with tailing anteriorly.

(7) Oblique Incised wound 3 x 0.5 x 0.5 cm on left side of back of head 2 cm behind left mastoid process.

(8) Incised wound 2.5 x 1 x 0.5 cm on the back of outer aspect of left hand below the webspace of left thumb and left index finger 2 cm below the wrist.

(9) Oblique incised wound 1.5 x 0.3 x 0.5 cm on outer aspect of left thumb in the back of proximal phalynx.

(10) Incised wound 1 x 0.3 x 0.3 cm on back of left wrist.

(11) Incised wounds 2 x 0.4 x skin deep over front of right index finger in proximal phalynx (12) Incised wound 0.5 x 0.3 x skin deep over front of middle of right middle finger (13) Scratch abrasions 4 x 0.2 cm seen on front of upper part of neck.

(14) Scratch abrasions 3 x 0.3 cm seen on front of upper part of neck.

(15) Scratch abrasions 0.5 x 0.3 cm seen in left side of chin.

(16) On dissection on the head; Dark Red contusion 5 x 4 cm x 0.5 cm on back of head in the occipital region."

As to the cause of death, which is relevant under Section 7 of the Evidence Act, Dr.Selvakumar (PW-21) has stated that 'the deceased would appear to have died of shock and haemorrhage due to cut injury to the neck.'

(l) After postmortem, Ansari (PW-19) handed over the body of the deceased Gunaram to relatives and collected the blood stained cloths worn by the deceased viz., blood stained white pant (MO-7); blood stained white colour banian (MO-8); blood stained underwear (MO-9); rose colour half shirt (MO-19) from the Postmortem Doctor (PW-21) and handed them over to the Inspector (PW-28), to send the same to the Tamil Nadu Forensic Sciences Department through Court for examination and report.

(m) While the investigation was in progress, breakthrough in the case came when Ramajayam @ Appu (accused/appellant) was apprehended by the Public when he attacked one Chandraprabha and attempted to snatch her Gold Chain, and was thereafter handed over to S-10 Pallikaranai Police, who registered a case in Cr.No.925 of 2012 on 12.5.2012 at 17.00 hours under sections 393, 397, 450 and 307 IPC.

(n) Sahadevan (PW-27), Inspector of Police, Pallikaranai Police Station (hereinafter referred to as 'Pallikaranai Inspector') took up the investigation in Cr.No.925 of 2012 and during interrogation, the accused disclosed about his involvement in this case. His confession statement was recorded and based on the disclosure made by him, in the presence of Chittibabu (not examined) and Balaji (PW-22), Pallikaranai Inspector (PW-27) recovered 32 pieces of Gold Covering Chains (MO-1 series) and a T-Shirt with blue and ash colour horizontal stripes (MO-4) from the residence of Jaishankar (PW-13), a Police Constable, whose sister-in-law (wife's sister) was in love with the accused and was slated to marry him shortly.

(o) The accused was produced before the jurisdictional Magistrate by Pallikaranai Police in Cr.N.925 of 2012 and was remanded to judicial custody on 14.5.2012. The Gold Covering Chains (MO-1 series) and T-Shirt (MO-4) were handed over by the Pallikaranai Inspector (PW-27) to John Arumairaj (PW-28), Maduravoyal Inspector on 14.5.2012 itself under Form-95.

(p) On 15.5.2012 John Arumairaj (PW-28) made necessary application before the Judicial Magistrate No.II, Poonamalee and took police custody of the accused for seven days and interrogated him. He recorded the confession statement of the accused and the admissible portion is marked as Ex.P-4. Based on the disclosure of the accused, the Inspector (PW-28) took the accused to the house of Jaishankar (PW-13) and in the presence of Mareeswaran (PW-14) and Manoharan (not examined), recovered a blue colour jeans pant (MO-3), said to have been worn by the accused at the time of the incident and a knife (MO-5), said to have been used for the commission of the offence, under the cover of Mahazar (Ex.P-5). He also seized the slippers (MO-6) worn by the accused under the cover of the mahazar (Ex.P-3).

(q) PW-28 requisitioned the services of Bala Arumugam (PW-20) to take photographs of the accused (MO-11 series). On 23.5.2012, the photographs that were taken were sent to the Tamil Nadu Forensic Science Department through the Court for comparison with the CCTV footage recorded in the shop. After expiry of the period of police custody, the accused was sent back to judicial custody.

(r) Kala (PW-23), Scientific Officer, Tamil Nadu Forensic Science Department examined the CCTV footages recorded in the Digital Video Recorder (MO-2) and submitted a detailed report dated 23.7.2012, which is marked as Ex.P-10. Kala (PW-23) in her evidence and report (Ex.P-10), has stated as follows:

"c) On playing back the recording continuously on the incident date 14/04/2012, the sequence of events that transpired (murder incident) are tabulated sequentially:

Time in Hours on 14.4.2012 Events that transpired as observed from the video footage/recordings through channels Display/  
Channel number 11:19:57 A stranger is seen entering the shop CH3 11:20:01 The stranger is seen conversing with the shop owner inside the shop CH2 11:20:01 to 11:20:57 Conversation between the two goes on CH1 and CH2 11:20:57 Shop owner displays a catalogue CH2 and CH1 11:24:43 The shop owner is seen entering the safety locker room for the first time CH2, CH1 11:24:47 The shop owner seen inside the safety locker room CH4 11:24:51 Shop owner is seen opening the safety locker viewing the jewels taken from the safety locker CH4 11:24:55 The stranger is seen waiting outside CH2 11:25:18 The stranger is seen placing his bag on the desk CH2 11:25:22 Shop owner is seen viewing the jewels taken from inside the locker CH4 11:25:40 Shop owner is seen coming out of the safety locker room and again has conversation with stranger till about 11:38:17 CH2 11:38:21 The shop owner is seen re-entering the safety locker room for the second time CH2 11:38:23 The shop owner is seen inside the safety locker room and once

again is viewing the jewels taken from the safety locker room CH4 11:38:51 The stranger is seen waiting outside CH1 11:38:55 Stranger is seen suddenly barging in and entering the safety locker room CH1 11:38:59 Stranger is seen entering the safety locker room CH2 11:38:59 to 11:39:40 The stranger is seen inside the safety locker room, cuts/stabs several times the shop owner with a knife CH4 11:40:16 The stranger is seen wiping the knife CH4 11:40:23 The stranger is seen placing the knife inside pant pocket CH4 11:40:26 The stranger is seen closing the safety locker room leaving the shop owner in a pool of blood CH4 11:40:29 The stranger is seen coming out of the safety locker room CH1 11:40:29 The stranger is seen locks the door of the safety locker room from outside CH1 11:40:34 The stranger is seen picking his bag from the desk where he left it CH2 11:40:39 to 11:41:18 The stranger is seen entering the inside shop owners area and picking the jewels from the display panel and putting some of the jewels from display in his bag CH2 11:41:23 The stranger is seen walking out of the shop after picking the jewels CH2 11:41:27 The stranger is seen walking out of the shop after picking and packing the jewels CH1 11:40:36 to 11:53:15 The shop owner/victim attempts to knock the door from inside the safety locker with pool of blood several times and finally collapses at 11:53:15 CH4

d) it was also observed that no voice/audio had been recorded in this incident

e) The recording continuously goes on till the arrival of the police and thereafter (13:30 Hrs)."

(s) Pushparani (PW-24), Scientific Officer, Anthropology Division of Tamil Nadu Forensic Science Department compared the images in the CCTV footages with the photographs of the accused taken by Bala Arumugam (PW-20) and gave her report (Ex.P-12). Pushparani (PW-24) in her evidence and report (Ex.P-12) has stated as follows:

"Item 5 We have carefully examined the face of the male individual wearing the T-Shirt in the Video footage (Item-5) at the time between 11.20 and 11.41 with a male individual seen in items 1, 2 and 3 using morphological study.

OBSERVATION The asymmetric eye brows, the deep root of the nose and the broad bridge of the nose seen in the face of the male individual in items 1, 2 and 3 are well correlated with the corresponding features seen in the face of the male individual in item 5.

OPINION The male individual seen in items 1, 2 and 3 could possibly have belonged to the male individual seen in item 5."

(t) John Arumairaj (PW-28) examined the experts and other witnesses and on his transfer, Kannan (PW-29), Inspector of Police proceeded with further investigation and filed Final Report before the jurisdictional Magistrate for the offences under Sections 404, 302 and 449 IPC.

3. On appearance of the accused before the trial Court, provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Sessions in S.C.No.142 of 2013 and was made over to the III Additional District and Sessions Court, Tiruvallur @ Poonamallee, where charges for the offences under Sections 449, 302, 392 and 404 IPC were framed. When questioned, the accused pleaded "Not Guilty".

4. To prove the charges, the Prosecution has examined 30 witnesses; marked 22 exhibits; and produced 15 material objects.

5. The accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances and he denied the same. No witness was examined, nor any exhibit was marked on the side of the accused/appellant.

6. After hearing both sides and appraising the evidence on record, the trial Court has convicted the accused and sentenced him as follows:

Conviction u/s Sentence imposed 449 IPC 10 years R.I.

392 IPC 10 years R.I.

404 IPC 3 years R.I.

302 IPC Death Sentence The sentences of imprisonment imposed for the offences under Sections 449, 392 and 404 IPC were ordered to run concurrently.

7. We have heard Mr.S.Shanmugavelayutham, learned Public Prosecutor for the State and Mr.M.Jagadeesan, learned Counsel appearing for the accused/appellant.

8. During the hearing of the case, we noticed that the trial Court had not played the DVR (MO-2) and seen the CCTV footages in the presence of the accused. In this regard we propose to dispel misgivings, if any, in the mind of trial Judges about their power to view such evidences. There will be instances where, by the time the case comes up for trial in one court, the electronic record would have had a natural death for want of proper storage facilities in the Court property room. To obviate these difficulties, we direct that, on a petition filed by the prosecution, the Judicial Magistrate, who receives the electronic record, may himself view it and take a back up, without disturbing the integrity of the source, in a CD or Pendrive or any other gadget, by drawing proceedings. The back up can be kept in safe custody by wrapping it in anti static cover and should be sent to the Sessions Court at the time of committal. The present generation of Magistrates are computer savvy and they only require legal sanction for taking a back up. They can avail the service of an expert to assist them in their endeavour. Recently the Supreme Court in *Shamsher Singh Verma v. State of Haryana*, 2015 (12) Scale 597, has held that CD is a 'document' within the meaning of Section 3 of the Indian Evidence Act, 1872. In *Ziyouddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, (1976) 2 SCC 17, the Supreme Court has held that tape records of speeches are 'documents' as defined in Section 3 of the Indian Evidence Act, 1872. This Judgment has been relied upon in *Shamsher Singh Verma's case* (cited supra). Therefore, we hold that articles like Memory Card, Hard Disc, CD, Pen-drive, etc., containing relevant data in electronic form are 'documents' as defined under Section 3 of the Indian Evidence Act, 1872, albeit, marking them as material objects. After all, nomenclature cannot have the effect of altering the characteristics of an object. The words 'proved' and 'disproved' in section 3 of the Evidence Act have the following common denominator;

"A fact is said to be proved/disproved when, after considering the matters before it ....."

(emphasis supplied) Without viewing the CCTV footage, how can any Court, "consider the matter before it " to conclude that a fact has been 'proved' or 'disproved' ? That apart, Section 62 of the Indian Evidence Act, 1872 states, "Primary evidence means the document itself produced for the inspection of the Court."

(emphasis supplied).

This does not mean that, if a secondary evidence of a document is admitted lawfully, the Court is denuded of the power to inspect it. Such an inference will lead to absurdity. Therefore, we hold that a Court has the power to view CCTV footage and video recordings, be it primary or legally admissible secondary evidence, in the presence of the accused for satisfying itself as to whether the individual seen in the footage is the accused in the dock. The trial Court should also specifically put questions to the accused when he is examined under Section 313 Cr.P.C. about his overt acts appearing in the footage and record his answers.

9. Bhudharam (PW-6) in his evidence has stated that, in and around that time, he came to the shop of the deceased and saw the accused there. He identified the accused for the first time in the dock as the person whom he saw in the shop on that fateful day. Therefore, we decided to view the DVR proceedings (MO-2) in the presence of the accused and Budharam (PW-6) for satisfying ourselves about the assertion of Bhudharam (PW-6) that he saw the accused in the shop of the deceased. As stated above, we also wanted to view the video footage to see whether the accused is seen therein. Hence, on 22.12.2015, we passed orders under Section 367 and 391 Cr.P.C. for summoning Bhudharam (PW-6) and for production of the accused on 12.1.2016.

10. On 12.1.2016, the accused was produced under escort and Bhudharam (PW-6) was also present. In the presence of the accused, his advocates, the Public Prosecutor, Investigating Officers, and officials of the Registry, we viewed the DVR (MO-2) recordings in open Court. After viewing the footage, Bhudharam (PW-6) was examined in chief by the Public Prosecutor, and cross-examined by Mr.M.Jagadeesan, the learned Counsel for the accused. Thereafter, we questioned the accused under Section 313 Cr.P.C. on the incriminating evidences in the DVR recordings and also on the evidence given by Bhudharam (PW-6). The reply of the accused was



a wholesale denial. After hearing the argument of either side, we reserved orders.

#### Discussion of Evidence

11. Dhanaram (PW-1) deposed that his deceased brother Gunaram and he were into Pawn Broking and Jewellery business and were running 'Balaji Pawn Broking' at No.1, 13th Street, Sakthi Nagar; that on 14.4.2012 the deceased Gunaram opened the shop around 8.00 a.m. and around 9.00 a.m. he went to the shop and was there for some time, and later went to Sriram Finance, Virugambakkam; and that when he returned back to the shop, he found his brother on the floor in a pool of blood. When he raised an alarm, people from the neighbouring shop viz., Sahadev Prohith (PW-2), Varadarajan (PW-3), Selvi (PW-4), Kumar (PW-5) and Ashok (PW-7) gathered. It is not the case of the Prosecution that these witnesses had seen the assailant. PW-1 Dhanaram has further stated that the Police immediately played the Video Recorder and in the footage played he saw the accused. He also identified the 32 pieces of Gold Covering Chains (MO-1 Series) while in the witness box.

12. The fact that Gunaram's death was homicidal has been proved beyond any pale of doubt by the Prosecution, and that is also not seriously disputed by the defence. The only question that requires to be decided is, whether the accused was the perpetrator of the crime ?

13. The Prosecution heavily relied upon the evidence of Budharam (PW-6), who is said to have seen the accused in the shop of the deceased in and around the time of occurrence. Budharam (PW-6) in his evidence before the trial Court has stated that he is working in Chethan Fancy Store, owned by his brother and also doing chit business; that on 14.4.2012 in the afternoon he came to the shop of the deceased for collecting chit amount from Dhanaram (PW-1), who is said to be a subscriber; that at that time one customer wearing blue colour jeans and T-Shirt was in the shop, whom he identified as the accused in the dock. In the Digital Video Recording (MO-2) that was viewed by us on 12.1.2016, we saw Budharam (PW-6) entering the shop while the accused was talking to the deceased. After talking to the deceased for a few minutes Budharam (PW-6) is seen leaving the shop. Therefore, it cannot be contended that he was a witness planted by the Police.

14. Mr.M.Jagadeesan, learned counsel for the accused submitted that the evidence of Budharam (PW-6) lacks credibility because the Digital Video Recording shows Budharam (PW-6) entering the shop at 11:36:08 hours and leaving the shop at 11:37:15 hours, and in that short time he could not have registered the face of the accused in his mind. If the recording between 11:36:08 and 11:37:15 hours is analyzed in isolation, the argument of Mr.M.Jagadeesan may appear convincing. In reality, when we viewed the recordings, one minute comprising sixty seconds does not pass in a wink. In our opinion, being with a person for one full minute is sufficient to register his face and remember it. We have no material to infer that Budharam (PW-6) is a person of very poor memory. In the cross examination, his capability to remember the face of a person if seen once was not challenged. Therefore, we reject this argument and accept the evidence of Budharam (PW-6) that he saw the accused in the shop of the deceased on that fateful day. The CCTV footage corroborates his evidence to the hilt.

15. Apart from the CCTV recordings, there are two other powerful incriminating circumstances that stares at the face of the accused.

(a) The fact that the accused was apprehended by the public on 12.5.2012 when he attempted to rob one Chandraprabha and was handed over to the Police has been established through the evidence of Sahadevan (PW-27), Inspector of Police, Pallikaranai Police Station. During interrogation by Sahadevan (PW-27), the accused spilled the beans and disclosed his involvement in the present case. This is a fact which was hitherto unknown to Sahadevan (PW-27), and therefore, the discovery of the fact that a murder case is under investigation by the Maduravoyal Police, based on the information provided by the accused, is relevant and admissible under Section 27 of the Indian Evidence Act, 1872, though the confession is, perse, hit by Section 25 of the Indian Evidence Act, 1872.

(b) The next incriminating circumstance is the recovery of 32 pieces of Gold Covering Chains (MO-1 series) and horizontally striped T-Shirt (MO-4) by PW-27 from the residence of Jaishankar (PW-13) at the instance of the accused. At this juncture it may be relevant to discuss the evidence of Jaishankar (PW-13). PW-13 has deposed that he is a Police Constable in Nungambakkam Police Station and is living with his wife Kavitha and two children in the Police Quarters in the Thousandlights area; that his wife's sister Anjali was in love with the accused and wanted to marry him; that the accused would frequently come to his house and stay with

them; that the accused told them that he needs money to go to Canada for higher studies, for which Jaishankar (PW-13) pledged his wife's jewellery and gave him Rs.9 lakhs on loan. Whiles, on 13.5.2012, Pallikaranai Police brought the accused to his house and seized 400 grams of jewellery and a T-Shirt; that he identified the covering jewellery as MO-1 Series and T-Shirt as MO-4; and that, on 18.5.2012 the Inspector of Police Maduravoyal Police Station brought the accused to his house and recovered a Jeans Pant (MO-3) and a knife (MO-5) in the presence of Mareeswaran (PW-14) and Manoharan (not examined).

16. Mr.M.Jagadeesan, learned Counsel appearing for the accused/appellant seriously attacked this evidence by pointing out certain discrepancies. He submitted that Jaishankar (PW-13) had deposed in the Chief Examination that Pallikaranai Police had recovered 400 grams of covering jewellery (MO-1 series) and T.Shirt (MO-4), but in the cross-examination he has stated that on 13.5.2012 the Pallikaranai Police have recovered a knife (MO-5) and on 18.5.2012 the Maduravoyal Police had recovered a T-Shirt (MO-4). Though his submission was little attractive, yet on a closer scrutiny of the evidence of Jaishankar (PW-13) it is seen that he was examined in chief on 12.2.2014 and he was not cross-examined immediately. He was recalled and examined only on 2.9.2014 nearly eight months later. The Supreme Court has deprecated this practice of defence counsel not cross-examining the prosecution witnesses immediately and recalling them months later for the purpose of cross-examination (See: Vinod Kumar v. State of Punjab (2015 (1) Scale 542)). We are conscious of the fact that such techniques are adopted with impunity either to win-over the witness by intimidation or bribery or to take advantage of his memory lapse. We find, except confusing him on the aspect of recovery, the defence was unable to make any serious dent in the kernel of his evidence, viz., that the accused was permitted to live in the house as his sister-in-law was to marry him; and that the Police came twice to his house and recovered jewels, T-Shirts, Jeans pant and knife. Therefore, we do not find his evidence to be unworthy of acceptance.

17. That apart, the seizure of the Gold Covering Chains (MO-1 series) and T-Shirt (MO-4) has been established through the evidence of Sahadevan (PW-27), Inspector of Police Pallikaranai Police Station corroborated by the independent witness Balaji (PW-22). The gold covering chain (MO-1) was identified by Dhanaram (PW-1). It may be necessary to recall the evidence of Bawarlal (PW-11) who helped a distraught Dhanaram (PW-1) for stock taking. After viewing the CCTV recordings, Dhanaram (PW-1) had told Bawarlal (PW-11) that the assailant had taken away only the gold covering jewellery. As to the shortage of 48 grams of gold jewellery, he has told PW-11 that he has no idea and that only his deceased brother knew about all this.

18. It is trite that the disclosure leading to discovery of a fact in one case is relevant under Section 27 of the Indian Evidence Act, 1872 and admissible, even though it has been made during the investigation in another case (See: State of Rajasthan v. Bhup Ram, 1997 (1) Supreme Today 405). Hence, the disclosure statement and recovery of the covering jewellery (MO-1) and the horizontally striped T-Shirt (MO-4) by Pallikaranai Police is relevant and admissible in this case.

19. Mr.M.Jagadeesan, learned Counsel submitted that Sahadevan (PW-27), Inspector of Police, Pallikaranai Police Station ought to have sent the Gold Covering Chains (MO-1 series) and T-Shirt (MO-4) to the Court and should not have handed them over to the Maduravoyal Police. We are unable to countenance this submission for the simple reason that these articles that were seized by the Inspector of Police, Pallikaranai Police had nothing to do with the offence under investigation by them in Cr.No.925 of 2012 and it had everything to do with the investigation by the Maduravoyal Police in the present case. Therefore, we find no irregularity in this.

20. The learned Counsel further contended that the Inspector of Police, Maduravoyal Police Station (PW-28) ought not to have received these articles under Form-95 from the Pallikaranai Police, because the said form is used only for despatch of seized articles to the Court. Procedural irregularity, even if there is any, cannot vitiate the search and seizure, unless it is shown that some prejudice has been caused to the accused. In this case after receiving the materials from the Pallikaranai Police, Maduravoyal Police have despatched it to the Court, and therefore we have no hesitation in rejecting this argument.

#### CCTV Recordings

21. The most powerful evidence against the accused is the CCTV recordings. The presence of CCTV Digital Video Recorder (DVR)(MO-2) has been noted in the Observation Mahazar (Ex.P-18). The DVR (MO-2) was recovered by the Police immediately after the occurrence, with the help of Balakumar (PW-9) under the cover of mahazar (Ex.P-2). MO-2 was sent by the Court to the Forensic Sciences Department and the evidence of Mrs.Kala (PW-23), Scientific Officer and her report (Ex.P.10) graphically



explains the concatenation of events that took place in the shop on the fateful day. Together with the report, individual snapshots of the footage are also annexed. On a mere perusal of the snapshots it can be seen that a person wearing horizontally striped T-Shirt is found talking to the person in the counter; attacking him; and leaving the shop. The T-Shirt worn by the assailant, which is visible in the snapshots matches with the T-Shirt (MO-4) recovered at the instance of the accused. After the arrest of the accused, Bala Arumugam (PW-20) took photographs of the accused and the same were sent to the Tamil Nadu Forensic Sciences Department through the Court, which were scientifically compared with the images of the assailant in the CCTV recordings by Pushparani (PW-24), Scientific Officer, Anthropology Division.

22. Mr.M.Jagadeesan, learned Counsel submitted that the Police have violated various provisions of the Police Standing Orders while taking photographs of the accused in custody, and therefore no reliance should be placed on the report of the experts.

23. Assuming for a moment that the photographs were taken in breach of certain procedural law, can it in any way vitiate the action ? In American jurisprudence, illegally collected evidence is best described as "fruit of the poisonous tree" and American Courts frown upon them (See: *Nardone v. United States*, 60 S.Ct. 266). The 94th Law Commission Report suggested to the Parliament to bring in similar provisions into our Legal System, which was not accepted by the Parliament. In *State of M.P. through CBI, V. Paltan Mallah* ((2005) 3 SCC 169 : 2005 (1) CTC 457 (SC)), the Supreme Court has discussed the 94th Law Commission Report and has categorically held that the evidence collected illegally or in violation of the procedural law will not become inadmissible. Very recently in *Umesh Kumar v. State of A.P.* ((2013) 10 SCC 591), the aforesaid principle was reiterated in connection with photographs and tape-recordings. Of course, it would have been an ideal situation had the Police adhered to PSO 646 or the provisions of Identification of Prisoners Act, 1920, but the ground reality is, Police in India do not work in ideal situations. In *K.Ramaraj v. State by Inspector of Police, CBCID, Chennai* ((2014) 2 MLJ (CrI) 41), a Division Bench of this Court to which one of us (PNPJ) was a party, deprecated the practice of Police taking photographs of the accused in the Police Station. The Court however did not hold that the photographs so taken becomes incapable of being used by the Experts for their analysis and opinion.

24. The evidence of Pushparani (PW-24), Scientific Officer, Anthropology Division and her report (Ex.P-12) clinches the issue. She has stated in her evidence that she received a CD containing photographs of a person from the Court of Judicial Magistrate No.II, Poonamallee. She then called for the CCTV footage in this case that was already sent through Court to the Computer Wing of the Department and compared them morphologically. The reasons given by her which has been extracted above were reiterated in the witness box, and the defence was unable to demolish her evidence in any manner, except making a suggestion that she has not properly conducted the test.

25. In fine, we approve the method adopted by the Police in sending the Digital Video Recording (MO-2) itself to the Tamil Nadu Forensic Sciences Laboratory for the computer experts to view the recordings and give a report of the events in the nature of Ex.P-10. Similarly, the morphological study of the photographs of the accused that has been obtained by the Police from two sources, by Pushparani (PW-24), Scientific Officer, and her Report (Ex.P-12) stands accepted by us to infer that the assailant seen in the CCTV footage is the accused. It is axiomatic that the opinion of an expert, which is relevant under Section 45 of the Indian Evidence Act, 1872, when accepted by the Court graduates into the opinion of the Court. The Central Government has not yet issued notification under Section 79A of the Information Technology Act, 2000 on account of which Section 45A of the Indian Evidence Act, 1872 remains mute. Therefore, the methods evolved by Kala (PW-23) and Pushparani (PW-24), Scientific Officers of the Tamil Nadu Forensic Sciences Department to analyze and give their opinions on the electronic data, are correct and cannot be faulted.

#### Scientific and Legal Aspects of CCTV Recordings

26. As a prelude, we feel it will be appropriate to quote the following passage from the book "Law of Evidence" by the celebrated author Vepa P.Sarathi (6th Edition, page 208). We quote, "The law, it is said, walks a respectable distance behind science, but courts try to keep abreast. The criminal is quick to use science to commit ingenious crimes, and so the police and the courts should be no less innovative; and courts should always encourage the police to do so and admit the evidence collected by any innovative method. The law courts can play an important role by (1) taking expert evidence to see whether the best scientific methods have been used, (2) by the Judge scrutinising the evidence carefully, and (3) encouraging the scientists, when the evidence is reliable, by giving judicial recognition to his methods."

27. Criminal Justice Delivery System is built upon the episodic memory of witnesses and their capacity to translate the data stored in their memory into human language, for the purpose of communication and understanding by the Judge for rendering justice. Episodic memory is broadly described by Prof. Sen Cheng from RUHR University, Bochum, Germany as "fairly accurate representation of personally experienced episodes." To put it in short, the optic and auditory senses in human beings capture events and store them as memory in the brain. Thereafter the events can be narrated orally via a language. That is why, perhaps Jeremy Bentham called Witnesses as "eyes and ears of Justice" (See: State of M.P. v. Dharkole, 2004 AIR SCW 6241).

28. The capability of the human mind to give its own interpretation to what the eyes saw and what the ears heard while narrating, cannot be discounted. Universally, Courts have recognized the fact that there are bound to be exaggerations and embellishments in oral accounts. If five people are asked to see an event and give an account of it individually, there will not be unanimity in their versions. This has been scientifically tested and the following passage from *Laxman v. State of Maharashtra*, ((1974) 3 SCC 704) may be worth extracting, "13. Before we discuss the evidence further, we may observe that Professor Munsterberg, in a book called *On the Witness Stand* (p. 51) cited by Judge Jerome Frank in his *Law and the Modern Mind* (1949 ed. p. 106), gives instances of experiments conducted by enacting sudden unexpected preplanned episodes before persons who were then asked to write down, soon afterwards, what they had seen and heard. The astounding result was:

Words were put into the mouths of men who had been silent spectators during the whole short episode; actions were attributed to the chief participants of which not the slightest trace existed; and essential parts of the tragedy-comedy were completely eliminated from the memory of a number of witnesses. Hence, the Professor concluded: We never know whether we remember, perceive, or imagine."

It is axiomatic that CCTV footage does not suffer such ills and human frailties, and they are indubitably superior to human testimony of facts.

29. Confession of the accused, which is generally called the "Queen of Evidence" is kept out of judicial reach in India, if it has been given to a Police Officer, because our Police have still not come out of their colonial mind set. Therefore, Indian Police have to perforce search for evidence, other than Police confession, for bringing the guilty to justice. Fortunately today, Police will soon be relieved of hunting for other materials on account of the Information Technology revolution and the free availability of gadgets like CCTV cameras, pen cameras, mobile phone cameras, et.al, in the hands of common citizen. The Government of Tamil Nadu by G.O.Ms.No.113 Municipal Administration and Water Supply (MA-1) Department, dated 14.12.2012 has framed rules titled *The Tamil Nadu Urban Local Bodies (Installation of Closed Circuit Television Units in Public Buildings) Rules, 2012*, the preamble of which reads as under:

"As a measure of crime control, the Government felt that Closed Circuit Television Units (CCTV) should be installed in all public buildings, commercial establishments and places where large gatherings of public congregate, which will be made mandatory as a condition for issuing licence under relevant provisions of Municipal Corporation/ Municipal Rules."

By virtue of these Rules, now it has become mandatory for Public Buildings to install CCTV cameras. Apart from the law's compulsion, presence of lensmen with sophisticated cameras is ubiquitous. We also have in abundance camera buffs who love recording anything and everything for posting in Facebook and Whatsapp. The Police cannot afford to lose these evidences collected by individuals and instead, rely upon archaic method of collecting evidence. Very recently in *Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178, the Supreme Court acquitted the accused for the failure of the Police to produce the CCTV recordings, that being the best evidence. It may be necessary here to quote the relevant paragraph from the said judgment, which reads thus, "28. .... Notwithstanding the fact that the burden lies upon the accused to establish the defence plea of alibi in the facts and circumstances of the case, in our view, the prosecution in possession of the best evidence, CCTV footage ought to have produced the same. In our considered view, it is a fit case to draw an adverse inference against the prosecution under Section 114 Illustration (g) of the Evidence Act that the prosecution withheld the same as it would be unfavourable to them had it been produced."

30. At this juncture, we feel that it may be appropriate to discuss yet another issue that is likely to crop up when the Police seek to

seize equipment like Digital Video Recorder of a third party, who is unconnected with the offence. Let us take for example a case where a private individual's CCTV has captured a scene of crime taking place on the road. Can the police seize the DVR and deprive him of it? The owner may permit the police to transfer the data, but he may not be willing to give possession of his gadget, free of cost. We are aware that under the Tamil Nadu Financial Code there are provisions for defraying expenses incurred during investigation under the following heads of account:

Investigation Charges Head of Account:

For Districts: "2055-00-Police-109 District Police-1 Non Plan AA -

District Police, 05 Office Expenses, 06 Investigation Charges, (DP Code 2055 00-109AA 0565)"

For Chennai City: "2055-00 - Police-108 State Head Quarters Police-1 Non Plan AA - Commissioner of Police, 05 Office Expenses 06 Investigation Charges, (DP Code 2055 00-108AA 0565)"

G.O.Ms.No.633, Home (Police-I) Department, dated 29.7.2003 has empowered the Superintendents of Police to disburse Rs.500/- and the Zonal Inspectors General of Police to disburse Rs.2,000/- towards Investigation Charges. In our opinion, this is pittance of an amount and requires an immediate revision. We direct the Home Secretary and Finance Secretary of the State of Tamilnadu, and the Director General of Police to pass appropriate orders within two months from the date of receipt of copy of this Judgment to increase the disbursal powers of the Superintendents of Police to Rs.5,000/- and that of the Zonal Inspectors General of Police to Rs.15,000/- towards investigation charges. It is the sovereign duty of the State to protect the life and property of the citizens and also to bring the guilty to justice. The property of a total stranger cannot be taken away by the Police without paying reasonable compensation on the premise that they need it for investigation purposes. Hence, whenever the police seek to take away the gadgets and equipment belonging to a third party, they shall pay the cost without demur to the person from whom the property is taken away. Only then, will people come forward to assist the Police in the investigation of an offence. It is time we usher in a fair, ethical and moral procedure in policing vis-a-vis the common man.

31. One has to understand the science of CCTV Recordings in the light of the Information and Technology Act, 2000, for the purpose of its optimum usage as evidence in the Court of Law. Gone are the days when Hindustan Photo Films produced film rolls for loading in the camera and on the click of the button the image gets imprinted on the film. The imprint is called the negative, which is the primary evidence, and the positive developed therefrom is considered as the secondary evidence. That technique has now become defunct. Today, the physical images captured by the camera is converted by a computer software into information, capable of being stored as data in electronic form and the stored data is electronic record. Section 3 of the Indian Evidence Act, 1872 as amended by the Information and Technology Act, 2000 reads as follows:

"the expressions "Certifying Authority", "electronic signature", "Electronic signature Certificate", "electronic form", "electronic records", "information", "secure electronic record", "secure electronic signature" and "subscriber" shall have the meanings respectively assigned to them in the Information Technology Act, 2000."

The terms 'computer', 'data', 'electronic form' and 'electronic record' are defined under Section 2 of the Information Technology Act, 2000, as follows:

"2(i) "computer" means any electronic, magnetic, optical or other highspeed data processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network."

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

punched tapes) or stored internally in the memory of the computer".

"2(r) "electronic form", with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device."

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

32. In this case, in the shop of the deceased Ganaram, four CCTV cameras were installed at vantage positions, viz., one at the entrance; two inside the shop at different angles; and one inside the locker room, which has a huge safe vault. The images captured by the four cameras were transferred to a Digital Video Recorder (DVR) (MO-2), which is a rectangular box, through wires. DVR has a computer programmed circuit to receive the images from the four cameras and convert them into electronic form in binary and store them in the hard disk. The software is so programmed that it can not only receive and store, but also play back the images on a screen, be it a monitor, Television screen, or Cinema Screen. The information so stored are not tangible information for the Court to inspect and see with its naked eyes. The DVR is an electronic record within the meaning of Section 2(t) of the Information Technology Act, 2000, as it stores data in electronic form and is also capable of output. Since the gadget was small, the Police seized the DVR under the cover of mahazar and with the help of a Technician, they played it to the witnesses for the purpose of identifying the accused. By no stretch of imagination can this be faulted, because the police should have to act with alacrity to nab the criminal.

33. Strong reliance was placed by the learned Counsel appearing for the appellant/accused on the judgment of the Supreme Court in [P.V.Anvar vs. P.K.Basheer](#)], (2014) 10 SCC 473, where interpretation of Section 65A and 65B of the Indian Evidence Act came up for consideration and the Supreme Court held that an electronic evidence recorded in the CD, bereft of a certification under Section 65B is inadmissible in evidence. In para 24 of the said ruling it is held as follows, "24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65-B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act."

The above decision does not in any way enhance the case of the defence inasmuch as, in the last line, the Supreme Court has stated that, if an electronic record as such is used as primary evidence under Section 62 of the Indian Evidence Act, 1872 the same is admissible in evidence, without compliance with the conditions in Section 65B of the Evidence Act. In this case, DVR (MO-2) which contains the information is before the Court. There may be occasions when in large establishments like Railways, Airports where large number of cameras are installed and the information is stored digitally in huge servers, it may not be possible for the Police to seize the server and send them either to the Forensic Science Department or produce them before the Court. Only to obviate this difficulty and to satisfactorily meet the objections relating to admissibility of secondary evidence in electronic form, the Parliament thought it fit to provide a certification under Section 65B. Even if the certification is not obtained at the time of collection of evidence, yet, at the time of trial, evidence aliunde can be given through the person who was in charge of the Server, in terms of Section 65B of the Act, as held by a Division Bench of the Delhi High Court in *Kundan Singh v. State* (MANU/DE/3674/2015). The Police can also requisition the services of Computer Experts and Experts from the Forensic Sciences Department to retrieve data from a huge server through USB drive or CD drive or any other gadget for the purpose of investigation and production of the same before the Court without disturbing the integrity of the original source. If we fail to provide this facility to the Police, the Criminal Justice Delivery System will become a lame duck.

34. The question of copy as it is normally understood in physical data may not be applicable for electronic data. While retrieving the

data from a huge Server it would suffice if certification under Section 65B is obtained from the person, who is incharge of the Server. After so obtaining the information in a USB drive or CD or any other gadget, the expert can feed the data into his computer and take printouts in tangible form with his certification stating as to how he had collected the data from the Server and fed them into his computer and produced the outputs. These two certifications, in our opinion, will satisfy the requirements of Section 65B of the Indian Evidence Act, 1872 in all fours.

35. We are aware that in many public and private offices, though computers are operated by their staff, yet the manning and maintenance of servers, where the data is actually stored, is outsourced to private players like TCS, WIPRO, etc. Under those circumstances, it would suffice if Section 65B certificate is obtained from the person who is in charge of the server albeit the fact that he is not a staff of the parent organization. Section 65B does not require certification by a public authority unlike cases of issuance of certified copy of public document under section 76 of the Indian Evidence Act, 1872. It is not necessary in every case to examine the person who had given the 65B certificate as witness before the trial Court, unless the Court suspects the integrity of the electronic record that is produced as evidence. One should bear in mind that a digital image cannot be manipulated easily. Every digital image has a meta data stored in it. The meta data are structured as coded data, which gives every image its own character. It should be remembered that the certification under Section 65B is not for the truthfulness of the content of the computer generated record, but is essentially related to the working condition of the computer from where the stored record is produced in a tangible form for the Court to inspect.

Defence will always complain of manipulation, but Courts can reject fanciful objections bearing in mind the principle underlined in Section 114 of the Indian Evidence Act, 1872. De omnibus dubitandum (doubt everything) philosophy may be a road to scientific discoveries, but not for judicial enquiries, where perfect proof is utopian. The celebrated Jurist late lamented Nani Palkhivala commented, "Our Legal System has made life too easy for criminals and too difficult for law abiding citizens. A touch here and push there and India may become ungovernable under the present Constitutional Set up."

It is time that we come out of anachronistic mind set of suspecting and doubting every act of the Police, lest the justice delivery system should become a mockery.

36. The CCTV recordings show the accused wearing a horizontally striped T-Shirt (MO-4) entering the shop at 11 hours 19 minutes and 57 seconds (11:19:57 hours) and is talking to the deceased Ganaram. While the accused and the deceased are seriously discussing, at 11:36:08 hours Budharam (PW-6) enters the shop and after talking to the deceased, he leaves the shop at 11:37:15 hours. Thereafter the accused and the deceased resume their discussion. At 11:38:21 hours the deceased enters the Locker room and is taking some jewels from the vault. At 11:38:59 hours the accused enters the Locker room; takes out a knife from his pant pocket; pounces upon the deceased, who is squatting on the floor; holds him tight by his neck; saws his neck with the knife and stabs him repeatedly until he is satisfied that the man is dead. At 11:40:16 hours the accused wipes the knife and keeps it in his pant pocket. He comes out of the Locker room and picks up the jewels from the display desk and puts it in his bag. At 11:41:27 hours, the accused walks out of the shop.

37. The entry of Budharam (PW-6) at 11:36:08 hours has not been noted by Kala (PW-23) in her report Ex.P-10 and that was also one of the reasons for us to summon Budharam (PW-6). In Ex.P-10 report Kala (PW-23) has recorded as follows:

"On playing back the recording continuously on the incident date 14.4.2012, the sequence of events that transpired (murder incident) are tabulated sequentially."

From the above it appears that the expert had concentrated only on the murder incident and had not thought fit to record the entry of Budharam (PW-6) into the shop. Hence the failure to refer to the entry and exit of Budharam (PW-6) by Kala (PW-23) in Ex.P-10 is not fatal to the case of the prosecution.

38. After playing the video and examining PW-6 the accused was questioned under Section 313 Cr.P.C. with respect to the evidence of PW-6 before us and the incident seen in the video recording, to which he gave standard replies, 'Lie'.



39. Even to our naked eyes it was crystal clear that it was the accused, wearing the horizontally striped T-Shirt (MO-4) and jeans pant (MO-6) entering the shop of the deceased; talking to him; and after entry and exit of Budharam (PW-6), when the deceased goes into the Locker room, the accused enters the Locker room and indiscriminately cuts and stabs the deceased. Thereafter the accused comes out of the Locker room and gathers the jewels from the display panel and walks out of the shop. We are of the opinion that there is no further proof required in this case to hold the accused guilty of the offence.

40. Coming to the offence under Section 404 IPC, we are afraid that we cannot sustain the conviction. Section 404 IPC reads as follows:

"404. Dishonest misappropriation of property possessed by deceased person at the time of his death.- Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years."

Section 404 IPC falls within the sub-Chapter 'Of Criminal misappropriation of property' under the main Chapter XVII - 'Of Offences against Property'. From a reading of Section 404 IPC, it is clear that the ingredients of it cannot fit within the definition of the word "theft" or "robbery". This section applies to a situation where a person in a sly manner appropriates to himself a property in the possession of the deceased person at the time of his death. We are fortified in our view by the Division Bench Judgment of the Madhya Pradesh High Court in *Jamnadas Parashram v. The State of M.P.*, AIR 1963 M.P. 106, wherein in paragraph 34 it is held thus, "34. An argument arose during the course of the hearing whether the facts constituted an offence under Section 392 or under Section 404, Indian Penal Code. The basis for the argument was that in order to constitute 'robbery' all the elements of theft must exist and one of the ingredients of that offence, as defined in Sec.378 of the Penal Code is that the property stolen must have been in the possession of a "person". Now, in a case such as the one at hand it is difficult to hold precisely whether the articles were stolen before the murder or after it. In case the properties were taken by Jamnadas only after Mr.Raghuram breathed his last and was a dead body, could it be said that the offence committed was theft ? This argument at first appeared attractive (and we may also say that in another set of circumstances it may possibly be given effect to) but on a little reflection we find that where murder and robbery are committed in the course of the same transaction by the same person, the offence would fall under Sec.392 and not under Sec.404. In that context, the word "person" cannot be so narrowly construed as to exclude the dead body of a human being who was killed in the course of the same transaction in which theft was committed. The matter would be different if a thing is stolen from a dead body apart from the transaction in which death occurred. In our opinion, therefore, the offence committed by Jamnadas is punishable under Section 392, Indian Penal Code, and not under Section 404 of the Code."

Hence, the conviction of the appellant/accused under section 404 IPC and the sentence imposed thereon cannot be sustained and the same are liable to be set aside.

41. Now we have to address the unenviable aspect of the case viz., the sentence. Mr.M.Jagadeesan, learned Counsel appearing for the appellant/accused fervently and passionately submitted that the accused is an engineering graduate and there are possibilities of reformation. He also submitted that this is not "Rarest of Rare case" for sentencing the accused to gallows.

42. Per contra, Mr.S.Shunmugavelayutham, learned Public Prosecutor submitted that the diabolic manner in which the accused had committed the offence requires no mercy. He submitted that the accused has come armed with a weapon, which shows his pre-determination to commit the offence of murder. He also submitted that, had the accused committed the offence of murder while committing robbery, the situation would have been different. In this case, the accused was talking with the deceased for a very long time in the shop and when the deceased went into the locker room, he followed suit and pounced upon the unwary victim and started cutting his neck and stabbing, after tightly holding him. The victim was not even in a position to resist or struggle as he was a small man, when compared to the accused, whose frame is gigantic. The accused could have caused injuries and left the deceased at that, but instead, he started sawing his neck and stabbing him till the deceased fell motionless. If robbery had been the intention, the accused could have easily bolted the locker room from the outside and decamped with the jewellery from the show case of the shop.

The manner in which the offence was committed shows the blood thirst in the accused. He also submitted that the accused was again caught when he made a similar attempt on another lady and only during investigation of that case his involvement in this case came to light. Therefore the accused will be a menace to the society.

43. We have carefully considered the rival submissions. We have no doubt in our mind that all forms of homicide is abhorring because it stifles the life span of an individual artificially against the law of nature. In this case, fortunately for the State and unfortunately for the accused the entire occurrence has been captured by the CCTV cameras installed in the shop and recorded in the DVR (MO-2) on account of which we were able to view it. Normally a scene of crime is re-created in the Court by the oral account of witnesses and the Court draws necessary inferences by a process of deduction from proved facts. Very rarely the Courts get the opportunity to view the actual commission of an offence as in this case.

44. We asked the following question to ourselves:- Had we not viewed the video recordings but proceeded to decide the case with other evidence, would we have suffered the same impact ? The obvious answer is in the negative. Therefore, we are of the opinion that the sentence should not be decided based on the impact the video recordings had on us. Sans the video recordings, we are afraid we would have treated this case as another case of murder for gain, not warranting death penalty. In *Sangeeth v. State of Haryana*, (2013) 2 SCC 452, the Supreme Court has discussed the cases in which death penalty was confirmed/reversed and has held that sentencing should be based on the crime and the criminal. In this case, the manner in which the crime was committed may shake our conscience. But there is no material produced by the prosecution to show that the criminal is a menace to the Society. The learned Public Prosecutor contended that the accused was caught subsequently by the Public when he attempted to do similar offence and that is sufficient to show that he is a menace to the Society. In *B.A.Umesh v. High Court of Karnataka*, almost a similar situation arose where the accused was found guilty of rape, murder and robbery. Two days after the incident in that case, the local public caught him while he was attempting to escape from the house where he made a similar attempt to rob and assault a lady. The accused in that case was sentenced to death by the Supreme Court. This case has been discussed in *Sangeeth v. State of Haryana* (supra) at para 40 and the Supreme Court has doubted the procedure of relying upon a subsequent incident which has not been proved. So to in this case, though we have relied upon the evidence of the Inspector of Police, Pallikkaranai to the effect that the accused was caught by the Public and handed over to him, the trial in the later case is still pending and therefore we cannot come to the conclusion that he will be a menace to the Society in the absence of any other material and therefore we hold that the death sentence imposed cannot be sustained.

45. However, we find sufficient force in the submission of the learned Public Prosecutor that the offence has been committed in a cool, calculated and gruesome manner. The accused could have easily bolted the vault room from outside when Gunaram was inside and taken away as much as he could. There was no necessity to take away the life of Gunaram, if robbery had been the motive. Keeping in mind the macabre nature of the crime, we are of the view that the sentences imposed on the accused should run consecutively and not concurrently. Recently, the Constitution Bench of the Supreme Court in *Union of India v. Sriharan @ Murugan*, (2015 (13) Scale 165) has held that the Court, while sentencing an accused to imprisonment, can direct that he should suffer incarceration for a minimum period without statutory remission or commutation.

46. In the result,

- (a) The conviction of the appellant/accused under Section 404 IPC and the sentence imposed thereon are set aside.
- (b) The conviction of the appellant/accused under Sections 449, 392 and 302 IPC is confirmed.
- (c) The sentence imposed for the offences under Sections 449 and 392 IPC are also confirmed.
- (d) The death sentence imposed for the offence under Section 302 IPC is set aside. Instead, the appellant/accused is sentenced to life imprisonment. We direct that the accused should serve a minimum period of 25 years in prison during which period he will not be entitled to any statutory remission or commutation.
- (e) We specifically hold that the sentences imposed for the offences under Sections 449, 392 and 302 IPC shall run consecutively

and not concurrently. The appellant/accused shall first undergo the sentence for the offence under Section 449 IPC and on expiry of the said period, he shall serve the sentence imposed for the offence under Section 392 IPC and on expiry of the same, he shall serve the life imprisonment.

(f) With regard to the disposal of Digital Video Recorder (MO-2), which contains the entire occurrence in this case, we are of the view that it should be handed over to the Tamil Nadu State Police Museum for preserving it as an artifact. It will also help the Police to conduct case study and hone their investigation skills. Therefore, we direct the Director General of Police to depute an Officer of the rank of Superintendent of Police from the Police Training College to collect the DVR (MO-2) from the trial Court and preserve the same in an anti-static cover in the Police Museum at Ashok Nagar, Chennai. If any appeal is preferred against this judgment and the Supreme Court calls for the DVR (MO-2), the same shall be sent forthwith.

With the above modification in sentence and directions, CrI.A.No.110 of 2015 is dismissed and R.T.No.1 of 2015 is answered accordingly.

47. Before parting with this case, we direct the Home Secretary, Finance Secretary of the State of Tamilnadu and the Director General of Police to ensure that the disbursal power of the investigation charges of the Superintendents of Police and that of the Zonal Inspectors General of Police stipulated in G.O.Ms.No.633 Home (Police-I) Department, dated 29.7.2003, is enhanced from Rs.500/- to Rs.5,000/-, and from 2,000/- to Rs.15,000/- respectively. The Government Order enhancing the disbursal powers as aforesaid, shall be passed within a period of two months from the date of receipt of copy of this Judgment.