

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
21.12.2021	12.01.2022

Coram

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**  
**AND**  
**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**R.T.(MD)No.2 of 2021**  
**and**  
**Crl.A.(MD)No.534 of 2021**

**R.T.(MD)No.5 of 2021:**

State Rep. by  
The Deputy Superintendent of Police,  
Embal Police Station,  
Pudukkottai District.  
(Crime No.119 of 2020)

... Complainant

-vs-

Samivel @ Raja

... Respondent/Sole Accused

Referred Trial under Section 366 of the Code of Criminal Procedure  
on the judgment of the learned Sessions Judge, (Mahila Court), Pudukkottai,  
in Spl.S.C.No.28 of 2020, dated 29.12.2020.

For Complainant : Mr.Hassan Mohammed Jinnah  
State Public Prosecutor

For Respondent : Mr.S.Ramasamy

R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021

**Crl.A.(MD)No.534 of 2021:**

Samivel @ Raja ... Appellant/Sole Accused

-vs-

State Rep. By its  
The Deputy Superintendent of Police,  
Embal Police Station,  
Pudukkottai District.  
(Crime No.119 of 2020)

... Respondent/ Complainant

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of the learned Sessions Judge, (Mahila Court), Pudukkottai, in S.C.No.133 of 2018, dated 01.10.2021.

For Appellant : Mr.S.Ramasamy

For Respondent : Mr.Hassan Mohammed Jinnah  
State Public Prosecutor

**J U D G M E N T**

***(The judgment of the Court was made by S.VAIDYANATHAN,J)***

This case is arising out of murder of a victim child aged about 7 years, who belonged to Scheduled Caste community and was done to death after an aggravated penetrative sexual assault on the deceased victim child (hereinafter referred to as 'the deceased child').

2. The case of the prosecution is that the complainant Nagooran, (P.W.1), who is the father of the deceased child had entered into a

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

marriage with the 3<sup>rd</sup> wife, namely, Selvi, a mentally retarded and out of the said marriage, two children were born, one is the deceased child and another one was aged about 5 years. The accused had developed friendship with the deceased child to fulfil his sexual desire. On 30.06.2020 at about 3:00pm, in order to satisfy his lust, he had taken the deceased girl to the Kali Temple. Thereafter, the accused took her to an isolated place and committed the offence of aggravated penetrative sexual assault upon her and had ravished the child's genitalia. Later on, the accused, fearing that the deceased child would reveal the commission of offence to others, dashed her head against a tree and also pierced the face and neck of the deceased child and threw the body into a dried pond and covered the body of the deceased child with leaves and shrubs to screen the evidence.

3. The father of the deceased child (P.W.1) lodged a complaint (Ex.P. 1) to the respondent Police, on the basis of which, a case in Crime No.119 of 2020 came to be registered (Ex.P.18) initially for offences under Girl Missing under Section 174 Cr.P.C. and thereafter, it was altered into one of Sections 364, 302 and 201 IPC by way of alteration report (Ex.P.20) and again altered into Sections 364, 376, 302 and 201 IPC r/w 5(m), 5(j)(iv), 6(1)

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

of POCSO Act and 3(2)(V) of SC/ST Act (Ex.P.23). The respondent police, after enquiry, arrested the accused and after a detailed investigation by the Deputy Superintendent of Police (as the case has been registered under SC/ST Act, along with other IPC offences), a charge sheet was laid before the Judicial Magistrate, Thirumayam, which was subsequently, made over to the Mahila Court, Pudukkottai as per Section 209 Cr.P.C. for trial. The prosecution, in order to substantiate the offence against the accused, had examined 18 witnesses, marked 38 documents and exhibited 8 Material Objects and on the side of the accused, neither any witness was examined nor documents marked. The accused was questioned under Section 313 Cr.P.C. and he denied the charges levelled against him. The Trial Court, after analyzing the evidence let in by the prosecution, found the accused guilty of the offence and convicted him as follows:

Sl. No.	Offence	Sentence	Fine
1.	Section 302 IPC	Sentenced to death by hanging	Rs.5,000/- in default to undergo simple imprisonment for two months
2.	5(m) r/w 6(1) of POCSO Amendment Act, 2019	Sentenced to death by hanging	-

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

3.	5(j)(iv) r/w 6(1) of POCSO Amendment Act, 2019	Sentenced to death by hanging	-
4.	Section 363 IPC	To undergo rigorous imprisonment for 7 years	Rs.5,000/- in default to undergo simple imprisonment for two months
5.	Section 201 IPC	To undergo rigorous imprisonment for 7 years	Rs.5,000/- in default to undergo simple imprisonment for two months
6.	Section 3(2)(V) of SC/ST Act, 1989	To undergo imprisonment for life	Rs.5,000/- in default to undergo simple imprisonment for two months

4. In reverence to section 366 Cr.P.C, the judgment of the trial court is submitted to the High Court for confirmation. Same is taken on file as RT(MD) No.2 of 2021. The aggrieved accused has filed appeal against conviction in Crl.A.(MD).No.534 of 2021.

5. The learned Public Prosecutor submitted that the prosecution has proved the offence committed by the accused beyond any reasonable doubt. The deceased victim girl, who had been sexually assaulted and murdered belongs to schedule caste and during the occurrence, she was

aged 7 years and the accused had with the intention of committing aggravated penetrative sexual assault on the victim had kidnapped the victim child and taken her to Kilavi Dhammam Vari and had committed aggravated penetrative sexual assault on the victim child and had murdered the victim child and had hidden the body of the child.

5.1. The prosecution in order to prove its case had examined P.W.1 to P.W.18 and marked Ex.P.1 to 38 and M.O.1 to M.O.8 and the case is one based on the circumstantial evidence and on 30.06.2020, the deceased victim girl aged 7 years had been missing and on 01.07.2020, P.W.1 had given complaint and registered as 'Girl missing' and taken up for investigation and when P.W.1 had come to know through P.W.2, P.W.3 and P.W.7 that the accused had taken along with him the missing child and had given the said information to the Police, P.W.1, P.W.6 Police officials and villagers on search for the victim child at Kilavi Dhammam Vari, the place last seen by P.W.2, P.W.3 and P.W.7 had found the dead body of the deceased victim child and the first to see was P.W.6 and the police officials had recovered the body and sent it for postmortem.

5.2. After the autopsy the dress taken from the body of the deceased and the hair collected from the body of the deceased had been submitted by P.W.14 through special report and the accused on arrest had volunteered to give confession, which had been recorded in the presence of P.W.9 VAO and on the basis of the admissible portion of the confession Ex.P.11, M.O.6 the fencing karuvai stick and the dress worn by the accused on the occurrence day had been recovered by P.W.10 Inspector.

5.3. Since the deceased belonged to scheduled caste on the basis of the proceedings of the Superintendent of Police Ex.P.24, Ex.P29 the Deputy Superintendent of Police P.W.17 and P.W.18 had further investigated the case.

5.4. The prosecution had proved that on 30.06.2020, the deceased victim girl was missing and was not found inspite of due search and a complaint was lodged by P.W.1 on 01.07.2020 at 10.00 am and through P.W. 5 evidence, it is proved that on 30.06.2020 the accused had taken along with him the victim child at 3.00p.m. while taking flowers to Kali Temple.

5.5. Through P.W.2 and P.W.3 testimony, it is proved that the accused had taken the victim child along with him to Karambavayal Kaali Temple and through P.W.4 evidence, it is proved that after the occurrence the accused had come from the occurrence place very tensed and speedily and had also not answered the queries put by P.W.4 and the accused having asked for money to buy drinks from P.W.5 proves his culpable state of mind and on the basis of the evidence of P.W.2, P.W.3 and P.W.7 on searching the occurrence place on 01.07.2020, P.W.6 had seen the body of the victim child first and the presence of P.W.1 along with police and the villagers at that time is proved and through P.W.8 and P.W.10 the place where the deceased was lying dead has been proved and the body of the child lying dead where she was murdered is proved through P.W.11 and the photograph's M.O.7.

5.6. Through P.W.13 the postmortem Doctor and Ex.P15, it is proved that the victim child has been subjected to aggravated penetrative sexual assault and the cause of death of the victim child.



5.7. The prosecution has proved its case through oral, documentary and scientific evidence that the accused had committed the offence he has been charged of. The frock worn by the victim girl (M.O.1), the weapon used by the accused, namely, the fencing karuvai stick M.O.6, the dress worn by the accused M.O.2, M.O.3 and the blood stained mud from the occurrence place had been sent to the Forensic Lab for analysis and the blood taken during postmortem from the body of the deceased has also been sent for analysis. The blood group found in the material objects had also been found as 'A' group, which tally with the blood group of the victim girl.

5.8. The prosecution had proved the chain of link from the time when the victim child was missing till her dead body found in the dried pond and the link of the accused in the crime has been proved by the prosecution. The victim child is aged 7 years and the accused is aged 26 years and the accused being in the stage of father of child had brutally and inhumanly sexually assaulted the victim child and had caused various injuries on the body of the child and had murdered the victim child and the beastly behaviour of the accused is against nature and human conduct and the case falls within the ambit of rare of the rarest case.

5.9. The learned Public Prosecutor further submitted that the guilt of the accused was duly established through witnesses, more particularly P.Ws.2 to 5, depositions and recovery of material objects used for the crime. The accused, taking advantage of his familiarity with her and mental retard of her mother, ravished the deceased child and murdered her brutally, hence, he does not deserve any leniency from this Court, hence, in terms of Section 354(3) of Cr.P.C., the Trial Court has clearly explained the aggravating circumstances to impose death penalty on the accused, which is in consonance with the judgment of the Apex Court in the case of *Ramnaresh and others vs. State of Chhattisgarh*, reported in (2012) 4 SCC 257, wherein the Apex court drew a broad distinction between aggravating circumstances and mitigating circumstances as under:

“76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of Machhi Singh (supra). The aforesaid judgments, primarily dissect these principles into two different compartments - one being the 'aggravating circumstances' while the other being the 'mitigating circumstances'. The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the

Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Code of Criminal Procedure.

**Aggravating Circumstances:**

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Code of Criminal

Procedure.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

**(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.**

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

**Mitigating Circumstances:**

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

5.10. The learned Public Prosecutor further submitted that the accused had gone to the extreme level of murdering an innocent girl for his sexual pleasures and acted in a cruel manner by injuring the sexual organ of the girl, besides causing other injuries. Thus, it was submitted that the prosecution was able to prove the aggravating circumstances of the case, which would fall under Clause Nos.6 and 10 of the aggravating circumstances as per the aforesaid judgment and hence, it was prayed that the death sentence needs to be confirmed.

6. Per contra, the learned counsel for the accused contended that it is a case of circumstantial evidence and purely on suspicion, the appellant has been prosecuted and convicted based on surmise. The brake in the chain of circumstances was not at all considered by the Trial Court. The prosecution has failed to prove the commission of the offence by the accused and the evidence of P.Ws.2 to 5 are not trustworthy. There were several contradictions in respect of the evidence of P.Ws.1 to 5 in respect of time of occurrence and the delay in FIR, delay in recording the statement of the witnesses and the contradictions, were ignored by the Trial Court. The test laid by the Apex Court in **Baldev Singh vs. State of Haryana, 2009 SC 963** was not at all satisfied in this case. The learned counsel for the Accused / Appellant to discredit the prosecution case pointed out the following contradictions:

i) As per the prosecution, the occurrence had happened on 30.06.2020 and it is the statement of P.W.6, the sister of P.W.1 in her 161 Cr.P.C. Statement that only on 01.07.2020 on knowing that a complaint has been lodged, she had come to her brother's house but quite contra had deposed that she had come on 30.06.2020 itself and had searched in the

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

relatives house the whole day and the complaint was given the next day and it is evidence of P.W.2 Palanimuthu that the Police had enquired him only on 01.07.2020 and 02.07.2020 and that he came to know of the link of the accused in the crime only through others and hence he cannot be construed as a eye-witness and it is the evidence of P.W.3 that the Police had enquired him on 30.06.2020 itself, when the complaint itself is only on 01.07.2020;

ii) P.W.4 had deposed that he had not seen blood stains in the dress of the accused on the occurrence day and had admitted that he had only heard from others that the accused had raped and murdered the victim child and had admitted during his cross-examination that P.W.1 had only taken him to Aranthangi Judicial Magistrate Court, which proves that P.W.1, who is an interested witness had tutored P.W.4 to give statement;

iii) P.W.5 another eye-witness had deposed that only on 01.07.2020 Police had enquired him and after that Police had not enquired him and had admitted that while giving 164 Cr.P.C. statement before the Judicial Magistrate, Embal Police had come to the said place;

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

iv) P.W.8 the observation mahazar witness had deposed that at 4.15pm, the Police had recovered mud with blood stains and mud without blood stains but in the observation mahazar the Police had mentioned that in the occurrence place there was no evidence (தடயம்) to be collected and hence the seizure is not proved by the prosecution and further the other observation mahazar witness had not been examined by the prosecution;

v) P.W.9 the VAO who had signed in the confession statement of the accused had taken charge as VAO of Embal Village only on 01.07.2020 and the Police authorities had not chosen to get the confession statement of the accused in the place of arrest and the persons available near the place of arrest of the accused had not been chosen to be the confession statement witness;

vi) As per the evidence of P.W.10 he had signed as a witness in the observation mahazar in the occurrence place but the same has been typed in computer and the occurrence place being a village the prosecution has not proved as to how the observation mahazar was typed in a computer and a print obtained.



6.1. He further contended that this case cannot be termed as a rarest of the rare case, warranting death penalty, especially when it does not satisfy the test laid down by the Supreme Court. Therefore, it was pleaded that the accused is entitled to the benefit of doubt, as the witnesses failed to support the prosecution case in entirety. In any event, this is not a rarest of rare case to impose death penalty, as act committed by the appellant/accused does not fall under the definition 'aggravating circumstances', if the same is tested in the light of the judgment of the Supreme Court in *Bachan Singh Vs. State of Punjab* reported in **1980 (2) SCC 684**, wherein it was held as follows:-

“Aggravating circumstances:

A Court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed -

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under [Section 43](#) of the CrPC, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under [Section 37](#) and [Section 129](#) of the said Code.

7. This Court has very carefully and cautiously considered the submissions made on either side and perused the material documents available on record.

8. The case of the prosecution, as spoken by witnesses is that, on 01.07.2020 at about 10:00am, one Nagooran (P.W.1) gave a complaint to the Inspector of Police, Embal, informing that the previous day, i.e., 30.06.2020 at about 5:00pm, he and his younger daughter left home to the nearby village Ookur, his elder daughter XXX was at home, when he left. At about 6.00pm, when he returned home, his elder daughter XXX was not at home. He initially thought that she would have gone some where to play, so he searched for her. But, he could not find her anywhere. P.W.15 Duraiarasan, Sub Inspector of Police registered the said complaint (Ex.P.1) under Section 174 Cr.P.C. for 'Girl Missing' in Crime No.119 of 2020.

9. After lodging the complaint, P.W.1 returned home and at 12:00 noon went to the bus stand. He saw P.W.2 Palanimuthu and he informed P.W.1 that he saw the accused taking his daughter towards Karambavayal Kaali Temple. Immediately, P.W.1 went to the Kali Temple and enquired Maruthan (P.W.3) the Poojari of that Temple. He confirmed that the accused along with his daughter came to the temple the previous day. Soon thereafter, P.W.1 went to the Police Station and told the police the information he got from P.W.2 and P.W.3. Then, he came back to the village along with the Police, started searching the girl. Near the Kilvitham Varipakkam pond, his sister Sornavalli (P.W.6) first saw the dead body of the missing minor girl and screamed. His daughter was found dead with injuries. Thereafter, Police arranged for inquest and took photograph of the dead body. Balasubramaniyan (P.W.16) the Inspector of Police, who took up the investigation altered the section and proceeded, preparing the observation mahazar one at the residence of P.W.1 and another at the place near pond where the dead body was recovered. They are marked as Ex.P.6 and Ex.P.7 respectively. The body was sent to post mortem.

10. P.W.13 Dr.Valliappan, who conducted autopsy had given the post mortem certificate (Ex.P.13). The investigation revealed that at about 4.00

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

to 4.30pm on 30.06.2020, one Periyasamy (P.W.4) of that village had seen the accused hastily and agitatedly going from Kilavi Dhammam Vari towards Karambavayal. P.W.5 Kanthan a witness known to the accused and the deceased had seen them together at around 3.00pm proceeding towards the Kali Temple on 30.06.2020.

11. The accused was arrested on 02.07.2020 at about 12:00 noon. Based on his confession, the Velikaruvai stick (M.O.6), the blood stained half sleeves green colour shirt (M.O.2) and lungi (M.O.3) which was worn by the accused at the time of occurrence were recovered, under mahazars Ex.P.9 and Ex.P.10 in the presence of P.W.9 Krishnan VAO. The green colour half sleeves shirt and lungi was identified by P.W.2, who saw the accused and the deceased together at about 3.45pm on 30.06.2020. P.W.3 also has identified the shirt and lungi as the dress of the accused when he saw the accused and the deceased together at about 3.30pm on 30.06.2020.

12. The wooden log (M.O.6), shirt of the accused (M.O.2), lungi of the accused (M.O.3) frock of the victim girl (M.O.1) were sent to forensic lab and detected human blood group 'A'. Same is testified by the I.O. P.W.17 supported by biological and serology report marked as Ex.P.27 and Ex.P.28.

13. The accused has crossexamined the key witnesses P.W.1 to P.W.9 twice, but had not been able to impeach their creditbility. Particularly, P.W.2, P.W.3 and P.W.5 are the witnesses, who had seen the victim and the accused together. Their testimony stand solid and unassailable. Minor discrepancies regarding the time of missing as informed by P.W.1 cannot be taken serious note in this case, since the witness is a rustic villager and his complaint after searching his daughter wholenight of 30.06.2020, not specifiially mentioning the time of missing, does not go to the root of the case.

14. The chain of circumstances, last seen together by three independent witnesses (P.W.2, 3 and 5), his conduct after occurrence as spoken by P.W.4 and P.W.7, the recovery of bloodstained clothes of the accused in the presence of P.W.9, the matching of the blood group of the victim and the blood found in the accused dress are the links in the chain of circumstances to indicate the guilt towards the accused and the accused alone. The Trial Court has rightly on appreciation of evidence has held that the five point test for circumstantial evidence as envisaged by the Apex Court is fully satisfied in this case. This Court has no alternate view on this aspect.

15. That apart, Section 29 of the POSCO Act fastens statutory presumption against the accused person and the reverse burden is on the accused. In this case, the appellant/accused has committed penetrative sexual assault on a child and caused her death. Hence, the presumption stands against him. As pointed out earlier, the accused had re-called P.W.1 to P.W.9 and cross-examined them for the second time. In spite of affording opportunity to cross-examine the key witnesses twice, the accused neither discharged his reverse burden by discrediting the credibility of these witnesses nor adduced positive evidence to prove his innocence.

16. The learned counsel for the appellant/accused primarily harped upon the delay in lodging the F.I.R. and minor discrepancies found in the testimony of the witnesses. P.W.1, the father of the victim girl has explained in his complaint itself why there was a delay in lodging the F.I.R. In a Village, no one cannot expect to rush to the Police Station soon after noticing the missing of a person. It is quite natural to search for the missing person at all probable places and only after ascertaining that the missing person is not traceable within the expected vicinity, one will think of lodging a complaint to the Police. Therefore, the attempts made by the appellant to discharge the reverse burden on him, has failed miserably.

17. At this juncture, it is appropriate to refer to the judgment of the Hon'ble Supreme Court rendered in **Mahendran Vs. State of Tamil Nadu** reported in **2019 (5) SCC 67**, wherein the Hon'ble Supreme Court has observed that if the delay in registering the F.I.R. is satisfactorily explained, the credibility of the complaint need not be suspected. Similarly, contradictions, inconsistencies, exaggerations or embellishments if minor in nature and inconsequential, the same will not discredit the credibility of the witnesses. This case squarely falls within the said category. Therefore, this Court has no hesitation or doubt to hold that it is a case of homicide death caused by the accused Samivel @ Raja after committing aggravated penetrative sexual offence.

18. Now passing on to the question of sentence, I am impelled to remind the below quote of Hon'ble Justice V.R.Krishna Iyer in **Srirangan vs.**

**State of Tamil Nadu (AIR 1978 SC 274):**

“In the agonisingly sensitive area of sentencing, especially in the choice between life term and death penalty, a wide spectrum of circumstances attracts judicial attention, since they are all inarticulately implied in the penological part of Section 302 IPC read with Section 354(3) Cr.P.C. The plurality of factors bearing on the crime and the doer of the crime must carefully enter the judicial verdict.”

19. In the instant case, the crime is aggravated penetrative sexual offence coupled with murder. The victim is a 7 years old daughter of a mentally retarded mother, who incidentally also from suppressed community. The doer of the crime is a 26 years old male of the same village and he has committed the crime exploiting the trust of the innocent girl. The accused, in order to satisfy his sexual algolagnia and abnormal sexual desire, had deprived the life of a minor girl even at the bud. The Trial Court, finding all the factors and circumstances against the accused had imposed death penalty, recording special reasons as mandated under Section 354 (3) of the Code of Criminal Procedure. This Court, having held that the guilt of the accused proved, has to necessarily see whether death sentence is appropriate for the crime committed by the accused. Though Section 6 of the POCSO Act, 2012 and Section 302 IPC contemplate death or life imprisonment, the alternate sentence of death can be imposed for 'special reasons'.

20. Let us now analyze the case in terms of the above provisions and the propositions laid down by the Supreme Court in catena of cases to decide whether the case on hand falls under rarest of the rare cases to inflict death penalty or the pendulam be moved towards lesser punishment.



21. The Supreme Court has drawn certain principles to determine the question, relating to sentencing policy in Ramnaresh and others vs. State of Chhattisgarh (supra), which reads as follows:

(1) The Court has to apply the test to determine, if it was the rarest of rare case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

22. Bearing in mind the above principles coupled with the guidelines given by the Supreme Court in Bachan's case, the evidence in this instant case is to be re-assessed and re-considered, so as to come to a definite conclusion to ensure whether there was a balance consideration of aggravating and mitigating circumstances by the trial Court. Therefore, at the risk of repetition, the relevant evidence are recollected and analyzed again.

23. The evidence of P.Ws.2 to 5 is the vital factor to prove the last seen together theory. P.W.1 deposed that after lodging a complaint with the Police for missing of his daughter, he met Pazhanimuthu / P.W.2 on the way, who was sitting under a tree and it was P.W.2, who firstly revealed that his daughter was lastly found wandering with the accused near Karambavayal Kaali Temple. Thereafter, on enquiry with the Poojari (priest) of the Temple / P.W.3, it came to light that the accused had brought his daughter to the temple one day before.

24. P.W.2 - Palanimuthu, who is a Driver and neighbour of the accused has explicitly deposed that when he was going to a Pond for taking bath on 30.06.2020 at 3.45pm, he noticed the accused returning from the Temple along with the deceased child and at that time, the accused was wearing the green colour half hand shirt (M.O.2) and dark green lungi (M.O. 3). He further deposed that after getting beedi from the accused, he had gone for taking bath and for offering prayer. His statement under Section 164 Cr.P.C. (Ex.P.2) was recorded by the Judicial Magistrate, Aranthangi.

25. P.W.3 - Maruthan stated that he is a priest in the Kali Temple and P.W.1, deceased child and the accused are known to him. On 30.06.2020 at around 3.30, the accused accompanied by the deceased child visited the temple and after offering flowers, both of them left the place and on the next day, it was informed to him that the girl was missing. P.W.3 also duly identified the dress materials marked as M.O.2 and M.O.3, which were worn by the accused at the time of visiting the temple.

26. P.W.4 - Periyasamy had categorically deposed that while he was returning from his brother-in-law's house on the evening of 30.06.2020, he had seen the accused walking fast in an agitated manner towards Karambavayal and when he enquired about his hysterical mood, there was no reply from him and on the next day, he came to know of the fact that the daughter of P.W.1 was murdered. Prior to the deposition from the Court, he had given the statement (Ex.P4) before the Judicial Magistrate, Aranthangi regarding the overt act attributed to the accused.

27. The deposition of P.W.5 - Kanthan has more relevancy and significance to the facts of this case, who stated that he is working in a

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

factory in Tiruppur and both the accused and deceased are his neighbours. On 30.06.2020 at about 3.30pm., while he was in his house, he happened to see the accused carrying flowers proceeded towards Kali Temple along with the deceased child. Thereafter, he had seen the accused coming on a two wheeler around 6.30 or 7.00pm in a tensed manner and asked for money to buy liquor. P.W.5 offered Rs.40/- to buy liquor and both of them drank and left and again, at 8.00pm, the accused requested P.W.5 to provide the balance liquor, which was not available. P.W.5 also deposed that on the next day, i.e., 01.07.2020, the victim girl was found missing and dead.

28. The evidence of P.Ws.2 to 5 appears to be very natural and they are not related to each other and independent witnesses. There was a cogency in their statement and the corroboration was also duly proved by the prosecution. The accused, after committing the crime, fled from the village and disappeared, which itself is sufficient at the first instance to infer that he would have committed the offence, as he would be aware that several persons had seen him together with the deceased child and therefore, apprehending arrest at any time, he escaped from the village.

29. It is equally important to peruse the deposition of the Doctor, who conducted autopsy on the body of the deceased child to bring the act of the accused under the term extreme brutality, which is connoted as the aggravating circumstances in the *Bachan's* case. Dr.Valliyappan (P.W.13) categorically deposed that injuries found on the private part, cheek, lip, chest, neck, abdomen, left backside and left hand of the body and those injuries could have been caused with a sharp weapon like stick (M.O.6). He further deposed that the death would have occurred on account of the injuries caused on the heart and other limbs of the body or on account of the aggressive penetration.

30. The deposition of P.W.13 is corroborated with the medical evidence, which is evident from the Postmortem certificate (Ex.P.15) and in the post mortem report, following external injuries were found on the deceased body.

**“External Examination: (Injuries) ---**

“1. A reddish contused lacerated wound of size 2x2 cm, bone deep present over left side of forehead 2cm above the inner border of left eyebrow with clotted blood.

2. A reddish contused lacerated wound of size 2x1.5cm, bone deep present over left side of forehead 2cm just above outer border of left eyebrow with clotted blood.

3. A reddish contused lacerated wound of size 2x2cm, bone deep present over left side of face just outer to outer angle of left eye with clotted blood.

4. A reddish contused lacerated wound of size 2x2 cm over left side of nose middle one third with clotted blood. Nasal bridge completely fractured with extravasation of blood into surrounding area.

5. A reddish contused lacerated wound of size 2x2 cm over right side of nose middle one third with clotted blood situated 2 cm from injury no.4

6. A reddish contused lacerated wound of size 2.5x2 cm over right side of nose lower one third with clotted blood.

7. A reddish contused lacerated wound of size 3x2 cm over right side of nose lower one third 1.5cm above upper lip with clotted blood.

8. A lacerated wound of size 3x1 cm present over outer aspect of left side of upper lip with clotted blood.

9. A reddish contused stab wound of size 3x2 cm, oral cavity deep of 3cm present over middle one third of left mandibular region with clotted blood.

10. A reddish contused lacerated wound of size 3x2 cm, over left side of face lower one third 4 cm outer and below left angle of mouth with clotted blood.

11. A reddish contused lacerated wound of size 2x2 cm over right side of face middle one third 4cm in front of tragus of right ear with clotted blood.

12. A reddish oval abrasion of size 5x3 cm present over right side of face middle one third encircling injury no.11

13. Multiple small laceration present all along the pinna over left ear with clotted blood.

14. A reddish contused stab penetrating wound of size 3x2 cm present over back of neck over left side 6cm below posterior hair line, the wound tracks down and towards medially passed through the left carotid artery crosses the neck structure along left side, penetrates the posterior pericardial sac and enter into right atrium over posterior aspect with clotted blood all along the wound track with a depth of 13.5cm. Pericardial sac contains 100ml of clotted blood.

15. A reddish oval contusion of size 3x2 cm present over front of left side of neck middle one third

16. A reddish contusion of size 3 x 2 cm present over lower one third front of left side of chest

17. Multiple reddish linear abrasion of size ranging from 4 to 2 cm present all along the outer aspect of right side of abdomen, outer aspect of right thigh and right leg at places.

18. On examination of female external genitalia, it was noticed that, bilateral labia majora and minor muscles were contused, laceration of size 1.5x1cm present just above left labia major with clotted blood. Another laceration of size 1x0.5cm present vertically over upper one third of left labia minora with clotted blood. A reddish abraded contusion of size 2x1 cm present over middle one third of left labia majora. Hymen is contused all alone 4o clock position to 8o clock position. Swabs from respective area collected and preserved.

Finally, it was opined as follows in the certificate (Ex.P.15):

Opinion

1. Cause of death:

In our considered opinion death was due to cumulative effect of damage for the heart and multiple injuries over the body of the victim following aggressive penetrative sexual assual, which was fatal in ordinary course of nature and was fresh at time death, ante mortem in nature.

Probable time

a.Between injury and death - Recent

b.Between death and postmortem examination - within 48 hours of preservation of dead body at the morgue (01/07/2020)”

31. From the above report and deposition, one can easily visualize as to how the victim girl would have undergone sufferings and pain. The accused, after fulfilling his carnal thirst, had brutally attacked the deceased child with Fencing Karuvai Stick (M.O.6) and dashed her head on a tree, so as to pierce her face and neck. The recovery of M.O.6 was

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

witnessed by P.W.9, a Village Administrative Officer and the stick was seized on due identification by the accused himself.

32. In cases of circumstantial evidence, one of the five golden principles enumerated by the Supreme Court in *Hanuman Govind Nargudkas vs. State of M.P.*, reported in *AIR 1952 SC 343* was that “there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with innocence of the accused and must show that in all human probability, it must have been done by the accused.” As per the circumstantial evidence, otherwise known as last seen together theory, there should be corroborative evidences to connect the accused with the crime and the most important of it is that it can be a conclusive evidence, if the time gap between the accused and the deceased seen together is very minimal. Invariably and obviously, the time gap was too short in this case and P.Ws.2 to 5 had seen both the accused and the deceased together in and around the Kali Temple on 30.06.2020 between 3:00pm and 6:00pm.

33. In yet another case in *State of Haryana vs. Jagbir Singh*, reported in *AIR 2003 SC 4377*, a proposition was laid that there should be



no suspicions and conjectures in the minds of court regarding the guilt of the accused, then the person can be convicted on the basis of the circumstantial evidence. Looking at any angle, it could easily be concluded without any suspicion that in all human probability, the accused must have committed the offence. The accused, taking advantage of the solitary of the deceased child and her mother, being a retarded woman, acquainted with the deceased only for the purpose of triggering his subjective feeling and thereafter, fearing disclosure of the offence by the deceased, he decided to put a stop to her inhale in a brutal manner, which a normal human being dare not to do so.

34. It is pertinent to mention here that everyone's mind contains a liar, a cheat and a sinner and a man cannot be judged by his outer appearance, as Adolf Hitler, who ordered the execution of some eight million people and was responsible for the deaths of many millions more, hated cruelty to animals and was a vegetarian. If a person like the accused herein is allowed to survive in this world, he will definitely pollute the mind of other co-prisoners, who will be at the verge of release from jail in which he is confined. When the attitude of a man turns into the one of a beast

having no mercy over other creatures, he should be punished and sent to the eternal world.

35. In all fairness, we find that the judgment of the Trial Court fulfilled all the touchstone to determine that it is one of the rarest of rare cases for imposition of death sentence, as imposition of any other punishment much less life imprisonment is completely insufficient and inadequate and would not meet the ends of justice. Taking into consideration the brutality of attack, the barbaric manner in which the deceased child was murdered and the mental agony undergone by the parents, we find that except death sentence, no other sentence will be adequate. We have examined this case more carefully and having given our anxious thought to the facts, we have found that the mitigating circumstances in favour of the accused herein is no match to the aggravating circumstances.

36. We were little hesitant initially to take away a life of a person by way of a judicial order and thought of converting the punishment into the one of life imprisonment. But, after due deliberation and contemplation,

we were reminded of the preaching of Lord Krishna to Arjuna in the battle field that everyone is going to disappear from the World, even if he (Arjuna) does not shoot the enemies with arrows, even though they are relatives / known persons. Further saying, when a particular duty is given to a person, he has to discharge the same without fear or favour. We want to quote the few lines of the song sung by Seergazhi S.Govindarajan in the Movie Karnan, starred by Sevaliya Sivaji Ganesan, which was released in the year 1964 and it reads thus,

“மரணத்தை எண்ணிக் கலங்கிடும் விஜயா...  
மரணத்தின் தன்மை சொல்வேன்...  
மானிடம் ஆன்மா மரணமெய்தாது...  
மறுபடி பிறந்திருக்கும் மேனியைக் கொல்வாய்  
வீரத்தில் அதுவும் ஒன்று  
**நீ விட்டு விட்டாலும் அவர்களின் மேனி**  
**வெந்து தான் தீரும் ஓர் நாள் ... ஆ ... ஆ ....**  
என்னை அறிந்தாய் எல்லா உயிரும்  
எனதென்றும் அறிந்து கொண்டாய்  
கண்ணன் மனது கல் மனதென்றோ  
காண்டீபம் நழுவ விட்டாய்  
காண்டீபம் நழுவ விட்டாய்  
மன்னரும் நானே மக்களும் நானே  
மரம் செடி கொடியும் நானே

சொன்னவன் கண்ணன் சொல்பவன் கண்ணன்  
துணிந்து நில் தர்மம் வாழ ... ஆ ...

புண்ணியம் இதுவென்று உலகம் சொன்னால்  
அந்தப் புண்ணியம் கண்ணனுக்கே  
போற்றுவார் போற்றலும் தூற்றுவார் தூற்றலும்  
போகட்டும் கண்ணனுக்கே  
கண்ணனே காட்டினான் கண்ணனே தாக்கினான்  
கண்ணனே கொலை செய்கின்றான்  
காண்டபம் எழுக நின் கை வன்மை எழுக  
இக்களமெலாம் சிவக்க வாழ்க ... ஆ ... ஆ ....”

The crux / moral of the song is that when you are entrusted with a task, that has to be discharged without any deviation and without bothering about the criticism being made by others and the good, evil and other things vest with Him. In the song the word 'bravery' is mentioned, which denotes 'courage' to kill his enemies having evil character. Similar to that, the word 'courage' can be fitted to this case to mean that we have to discharge our duties without any fear or favour courageously as per the oath taken by us.

According to the great Tamil Poet, Tiruvalluvar,

"அறவினை யாதெனின் கொல்லாமை கோறல்  
பிறவினை எல்லாந் தரும்". குறள்.321.

R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021

[அறச் செயல் எது என்றால் கொலை செய்யாது இருப்பதே.  
கொல்வது அனைத்துப் பாவங்களையும் தரும்]

In English, "What is the work of virtue? 'Not to kill'; For 'killing' leads to every work of ill."

In yet another poem (English Couplet 548), the Poet wrote as follows:

"எண்பதத்தான் ஓரா முறைசெய்யா மன்னவன்  
தண்பதத்தான் தானே கெடும்". குறள்.548 .

[நீதி தேடி வருவார்க்கு எளிய காட்சியாளனாய், நீதி தேடுவார் சொல்வதை  
பலவகை நூலாரோடும் ஆராய்ந்து நீதி வழங்காத ஆட்சியாளன்,  
பாவமும் பலியும் தேடி தானே அழிவான்]

["The king who gives not facile audience (to those who approach him), and who does not examine and pass judgment (on their complaints), will perish in disgrace"]

Similarly, no religion will encourage murdering of other fellow human being and in the Holy Quran, it is unequivocally stated, "Whosoever killed a person... it shall be as if he had killed all mankind" (5:32). In the Bible (Numbers 35:30-31), it is ascribed that "30.If anyone kills a person, the murderer shall be put to death on the evidence of witnesses. But no person shall be put to death on the testimony of one witness. 31. Moreover, you shall accept no ransom for the life of a murderer, who is guilty of death, but he shall be put to death".

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

37. In the result, **Crl.A.(MD)No.534 of 2021 is dismissed.** The judgment of the learned Sessions Judge, (Mahila Court), Pudukkottai, sentencing the accused to hang till death for the offence punishable under Section 302 IPC, Section 5(m) r/w 6(1) and Section 5(j)(iv) r/w 6(1) of POCSO Act and imprisonment for a term of seven years R.I with fine of Rs. 5,000/- in default to undergo two months S.I. for each offences under Sections 363, 201 IPC and imprisonment for life for offence under Section 3(2)(V) of SC/ST (POA) Act with fine of Rs.5,000/-in default to undergo two months S.I., passed in Spl.S.C.No.28 of 2020 dated 29.12.2020 is hereby confirmed and upheld.

38. The reference in **R.T.(MD) No.2 of 2021**, in terms of Section 366 Code of Criminal Procedure for execution, **is answered accordingly.**

[S.V.N,J.,] [G.J,J.,]  
12.01.2022

Index: Yes / No  
Speaking Order / Non Speaking Order  
ar

**Note:** Registry is directed to forward a copy of this judgment forthwith to the Prison Authorities, Trial Court and the learned counsel for the Appellant/Accused.

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

To:

1. The Deputy Superintendent of Police,  
Embal Police Station,  
Pudukkottai District.
2. The Sessions Judge (Mahila Court),  
Pudukkottai.
3. The Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

*R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021*

S.VAIDYANATHAN,J.,  
and  
G.JAYACHANDRAN  
ar

PRE-DELIVERY ORDER IN  
R.T.(MD)No.2 of 2021  
and Crl.A.(MD)No.534 of 2021

12.01.2022