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Crl.A.No.520 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.520 of 2018

Mala @ Kaveri

... Appellant/Accused

Vs.

State through
The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram.
Crime No.78 of 2014

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 31.08.2015, in S.C.No.306 of 2014 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Villupuram.

For Appellant : Mr.C.S.S.Pillai
Legal Aid Counsel

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

(Judgment was delivered by **SUNDER MOHAN, J.**)

The appellant/sole accused has challenged the judgment of conviction and sentence, dated 31.08.2015, passed by the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Villupuram, in S.C.No.306 of 2014. The appellant was convicted and sentenced by the trial Court as follows :

<i>Conviction</i>	<i>Sentence</i>
Section 302 IPC	Life Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for one year
Section 451 IPC	Two years Imprisonment and to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for two months
Section 382 IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for one year
The sentences were ordered to run concurrently	

2.It is the case of the prosecution that the appellant was known to the deceased; that on 08.02.2014, between 4.00 p.m. and 5.00 p.m., the appellant with intention to steal jewels from the deceased, knowing well that she was alone in the house, came to the house of the deceased, pushed



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her down, as a result of which, the head of deceased dashed against a door and thereafter, fell on the floor and that the appellant caused the death of the deceased by smothering her with a pillow and took away the jewels belonging to the deceased.

3.It is further the case of the prosecution that, P.W.1 (the daughter of the deceased), saw the deceased lying on the floor at 6.30 p.m. after she returned from work. On the complaint (Ex.P1) given by P.W.1 on 08.02.2014 at 20.30 hours, the Head Constable belonging to Villupuram Taluk Police Station (P.W.20) registered an FIR in Crime No.78 of 2014 (Ex.P19) under Section 174 Cr.P.C. P.W.1 had stated in the complaint that she suspected the involvement of one Prabhu @ Manish against whom P.W.2 (P.W.1's sister) and the deceased had earlier lodged a complaint and gave evidence in Court and that the said Prabhu @ Manish had warned the deceased of dire consequences, for deposing against him.



4.P.W.21 took up the investigation and proceeded to the place of occurrence, prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P20). At about 21.30 hours on the same day, he seized M.O.1 – mat, M.O.2 – pillow from the scene of occurrence, under Seizure Mahazar (Ex.P3). He sent the body of the deceased to Mundiampakkam Government Hospital for postmortem at 21.45 hours through Constable P.W.16. On 09.02.2014, P.W.21 conducted inquest over the body of the deceased in the presence of witnesses and panchayatars and prepared inquest report (Ex.P21). He thereafter examined a few other witnesses and sought the help of dog squad. He collected M.Os.10 and 12, the ornaments from the body of the deceased, and sent it to Court under Form-91, which is marked as Ex.P22. On 10.02.2014, he examined one Jegan (P.W.8) (Auto Driver) near Villupuram New Bus Stop who had allegedly dropped the accused near the house of the deceased, and recorded his statement. He thereafter, recorded the statement of one Rajamanikkam (P.W.10), who had allegedly seen the deceased and the accused together at about the time of occurrence outside the house of the deceased.



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5.On 16.02.2014, the accused surrendered before the Village

Administrative Officer (P.W.11) and is said to have made a confession.

P.W.11 produced the accused along with the Special Report to P.W.21.

P.W.21 altered the offence to Section 302 IPC and filed alteration report

(Ex.P24) and sent it to Court. Thereafter, he recorded the statement of the

Village Administrative Officer (P.W.11) and his assistants. The

Investigating Officer recovered jewels from the accused and sent it to the

Court under Form-95 (Ex.P25). On the information given by the accused,

the Investigating Officer proceeded to Jayalakshmi Pawn Shop at

Thirukoilur, and recovered M.O.8 and M.O.9 jewels in the presence of one

Govindan (P.W.15) and Prakash (not examined). He examined witnesses

P.Ws.12, 13 and 14 on the same day, who are said to have bought old jewels

and sold new jewels to the appellant on 10.02.2014. On 19.02.2014, P.W.11

sent a requisition to the Chief Judicial Magistrate, Villupuram, for

conducting Identification Parade for identification of the accused by P.Ws.1,

2, 8, 9 and 10. On 26.02.20214, the Identification Parade was conducted

and identification proceedings were marked as Ex.P12. The report of the

learned Magistrate was marked as Ex.P13. On completion of the



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investigation, P.W.11 filed final report under Sections 451, 382 and 302 IPC against the accused.

6.On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.306 of 2014 and was made over to the Magalir Neethimandram (Fast Track Mahila Court), Villupuram, for trial. The trial Court framed charges for the offences under Sections 451, 302 and 393 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

7.To prove the case, the prosecution examined P.W.1 to P.W.21 and marked Exs.P1 to P27, besides M.O.1 to M.O.12. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against her, she denied the same. The appellant had not let in any oral or documentary evidence.



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8.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 31.08.2015, found that the prosecution had established the circumstances against the appellant beyond doubt and found the appellant guilty of the offences under Sections 302, 451 and 382 IPC and convicted and sentenced her as stated *supra*.

9.Challenging the conviction and sentence, the accused has preferred this Criminal Appeal.

10.The learned counsel for the appellant submitted that the circumstances against the appellant have not been conclusively established by the prosecution. The circumstances relied upon by the prosecution are that the appellant was last seen with the deceased outside the house of the deceased; that the appellant had pledged some jewels with P.W.12 and P.W.13 and was in possession of few other jewels; and the alleged extra judicial confession made by the appellant to the Village Administrative Officer (P.W.11). The learned counsel submitted that the witnesses speaking about the circumstance of last seen, namely P.Ws.6, 7 and 8, cannot be



believed, as their evidence is artificial and highly improbable. The learned counsel further submitted that, admittedly, the jewels said to have been given to P.Ws.12 and 13, were not available, since the old jewels were converted to new ones. The other jewels said to have been recovered from the appellant were not identified by the witnesses P.W.1 and P.W.2, the daughters of the deceased, as that belonging to the deceased. The extra-judicial confession is highly improbable, as the appellant is a total stranger to the Village Administrative Officer and there was no necessity for her to give an extra-judicial confession to the Village Administrative Officer (P.W.11). Besides the fact that the circumstances were not conclusively established, the evidence of P.W.1 and P.W.2 would show that they had doubt with regard to involvement of a person by name Prabhu @ Manish and that the Investigating Officer had not taken any steps to probe into the involvement of the said Prabhu @ Manish in the alleged offence. The learned counsel further submitted that P.W.1 and P.W.2 have both not only stated anything about the involvement of the appellant, but have also stated that the appellant used to give financial help to P.W.2, whenever she was in need of money.



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11.The learned Additional Public Prosecutor, *per contra*, submitted that P.W.8 is the Auto Driver who had dropped the appellant near the house of the deceased. There was no reason for him to falsely depose against the appellant. P.W.9 is the neighbour who saw the appellant coming in an Auto when he came out to pick up his children from school. Apart from these two witnesses, the extra-judicial confession of the appellant along with the recoveries would conclusively establish the involvement of the appellant and therefore, submitted that the trial Court was right in holding the appellant guilty of the charges and there is no reason to interfere with the judgment of the trial Court.

12.Heard the submissions and we have perused the evidence and other materials on record.

13.The case is based on circumstantial evidence. Admittedly, the deceased and the appellant were known to each other. P.W.1 and P.W.2 are the daughters of the deceased and both have deposed that they knew the



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appellant very well. P.W.1 first saw the deceased at 6.40 p.m. and found that her ear rings, chain, bangle and ring were missing. She called her husband P.W.3 and then lodged Ex.P1. P.W.1 had stated in her deposition about the threat made by one Prabhu @ Manish to both the deceased and P.W.2 for giving a complaint against him and deposing against him in Court. P.W.2's evidence is also to the same effect. P.W.3 is the husband of P.W.1 and would state that they had lodged a complaint stating that they suspected the involvement of one Prabhu @ Manish, who had threatened his mother-in-law, the previous day.

14.P.W.4 and P.W.5 are neighbours of the deceased who went to the house of the deceased after they came to know that the deceased was killed. P.W.6 is the milk man who had allegedly seen the deceased at about 3.00 p.m. on the fateful day. The evidence of P.W.4, P.W.5 and P.W.6 are of no avail to the prosecution.



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15.P.W.7 is the witness to the Seizure Mahazar (Ex.P3) by which a mat (M.O.1) and a pillow (M.O.2) were seized from the house of the deceased.

16.P.W.8 is an Auto Driver who is said to have dropped the appellant at Gandhi Nagar Ladies Hostel at 3.15 p.m. on 08.02.2014. P.W.9 is a neighbour of the deceased who saw the appellant near the house of the deceased in the afternoon when he went out to pick up his children from school. P.W.10 is another neighbour who saw the appellant getting down from the auto and the deceased taking the appellant to her house.

17.P.W.11 is the Village Administrative Officer, who speaks about the alleged confession made by the appellant on 16.02.2014 at about 7.30 a.m. and about his sending the appellant along with the Special Report to the Police Station.



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18.P.W.12 is the owner of jewelery shop by the name Ramesh Jewellery, who deposed that, on 10.02.2014, the appellant came with old jewels worth Rs.92,000/- and bought new jewels worth Rs.80,000/- and took Rs.12,000/- in cash. P.W.13 is an employee under P.W.12 who speaks about the appellant coming to their shop at 8.00 p.m. on 08.02.2014 and about his purchasing new jewels. P.W.14 is a Pawn Broker who had deposed that, on 08.02.2014 between 6.00 p.m. and 7.00 p.m., the appellant came and pledged a gold ring weighing 6 grams.

19.P.W.15 is the Mahazar witness for seizure of gold jewels from the shop of P.W.14. P.W.16 is the Corpse Constable. P.W.17 is the Constable who had assisted the Investigating Officer and speaks about the movement of sniffer dog. P.W.18 is the Judicial Magistrate who conducted the Identification Parade proceedings.

20.P.W.19 is the postmortem Doctor who opined that the deceased died of Asphyxia due to smothering and issued postmortem certificate (Ex.P15). P.W.19 had found the following injuries on the deceased :



“Injuries :

1.Contused abrasion over left side of face – 8 x 6 x 1.5 cm over left side of upper lip angle of the mouth left side and adjacent lower lip mucosa of the lips contused.

2.Abrasions seen over

- i. ala of left side of nose – 1 x 1.5 cm – curved (nail mark)*
- ii. left cheek 1.5 x 1 cm*
- iii. left knee 1 x 1 cm*
- iv. right knee 1 x 1 cm*
- v. upper 2/3rd of right lower leg 1 x 0.5 cm*

3.Contusion – 6 x 3 x 2 cm over left temporal region”

Ultimately, P.W.19 had given her final opinion (Ex.P16), as stated earlier, that the deceased would appear to have died of asphyxia due to smothering.

21.P.W.20 is a Constable who had handed over FIR to the Judicial Magistrate. P.W.21 is the Investigating Officer, who had conducted the investigation and details of whose investigation we have elaborated earlier.

22.From the above narrative, it could be seen that the prosecution primarily relies upon three circumstances to prove the involvement of the appellant in the offence of murder. The prosecution has established the fact



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that the deceased died due to homicidal violence. The postmortem certificate (Ex.P15), the final opinion of the postmortem Doctor (Ex.P16), and the evidence of the postmortem Doctor (P.W.19) establish the fact that the deceased died due to homicidal violence. There is no dispute with regard to the said fact. The question is whether the appellant is liable for the said homicidal violence.

23.Now, we may analyse the circumstances relied upon by the prosecution.

Last seen :

24.The evidence of P.W.8, the Auto Driver, who had dropped the appellant near the Ladies Hostel at Gandhi Nagar, does not help the prosecution in any manner. The prosecution had not established as to the distance between the Ladies Hostel and the house of the deceased. P.W.9, who is a neighbour of the deceased, had stated that the appellant came in an Auto and the deceased came out and took the appellant into the house. P.W.10 states that an old lady aged about 70 years came out and took the



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appellant who came in an Auto. P.Ws.9 and 10's conduct in not reporting to the Police on coming to know of the death of the deceased that they saw the appellant coming in an Auto makes their version highly doubtful. They were examined by the Police only on 10.02.2014. There is no reason why both had not reported to the Police that they saw the deceased along with the appellant on the fateful day prior to the occurrence.

25.Be that as it may, we find that P.Ws.8, 9 and 10 participated in the Identification Proceedings conducted by the Judicial Magistrate (P.W.18) at the request of the Investigating Officer. Admittedly, P.W.1 and P.W.2, who were both known to the appellant very well, were also taken along with P.Ws.8, 9 and 10 for the TIP Proceedings. P.W.1 and P.W.2 are not strangers to the appellant. They knew the appellant very well and in fact, P.W.1 and P.W.2 both have stated that the appellant used to help P.W.2 whenever she was in need of money. When that being the case, it is not known why P.W.1 and P.W.2 were taken along with P.Ws.8, 9 and 10 to the Identification Parade proceedings to identify the appellant. Therefore, there is every possibility that P.Ws.8, 9 and 10 were tutored to identify the appellant. The



identification said to have been made by P.Ws.8, 9 and 10 in the Identification Parade proceedings looks suspect. Therefore, we are of the view that the prosecution has not conclusively established the alleged last seen theory.

Recovery of jewels :

26.As regards recovery, we find that, admittedly, the jewels given to P.W.12 were not available for identification. P.W.12 had deposed that he knew the appellant very well and she was in the habit of pledging jewels. P.W.13, the employee under P.W.12, had stated that on the instructions of P.W.12, he gave an Estimation Slip (Ex.P8) to the Police, which the prosecution relied upon to show that the appellant went to the shop of P.W.12 to exchange the old jewels for the new ones. But in the Estimation Slip (Ex.P8), we do not find any reference to the appellant. That apart, we also do not find any slip or receipt seized from the possession of the appellant to prove the alleged exchange of jewels. The jewels pledged to P.W.14 seized during investigation also were not identified by either P.W.1 or P.W.2 as that belonging to the deceased. Further, we find from Ex.P9 that



one Thangam has signed in the Register. There is no explanation by the prosecution as to who this Thangam is, who had signed in the said receipt.

Therefore, we are of the view that the recoveries *per se* do not lead to an inference that they were stolen from the house of the deceased.

Extra-judicial confession :

27. We are unable to accept the voluntariness and truthfulness of the alleged confession of the appellant before the Village Administrative Officer (P.W.11). The Village Administrative Officer was a total stranger to the appellant and there was no earthly reason for the appellant to make a confession to the Village Administrative Officer. P.W.11, the Village Administrative Officer, admittedly had not recorded any confession. From his deposition, it can be seen that the appellant is said to have stated that she had committed a murder. No other details are found. Be that as it may. P.W.11's evidence further does not inspire confidence. Though he had signed as a witness for the recovery of the jewels, he would state in the cross-examination that he saw the jewels only in the Police Station, after the Police brought it.



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28.Further, we find from both the evidence of P.W.1 and P.W.2 that they both suspected the involvement of one Prabhu @ Manish against whom P.W.2 had given a complaint and deposed against him for cheating her. Both P.W.1 and P.W.2 have further stated that the said Prabhu @ Manish threatened the deceased of dire consequences for giving a complaint against him. Very strangely, we find that the Investigating Officer had not examined the said Prabhu @ Manish and had not conducted any investigation to rule out the involvement of the said Prabhu @ Manish. In this regard, we would like to point out to the answer given by the Investigating Officer in the cross-examination :

“அந்த மனிஷ் என்கின்ற பிரபுவை நான் விசாரிக்கவில்லை. வழக்கில் தேவையில்லை என்பதால் அவரை எதிரியாகவோ, சாட்சியாகவோ போடவில்லை, விசாரிக்கவும் இல்லை. மோப்ப நாயும் மனிஷ் வசிக்கின்ற தெருவின் வழியாகத்தான் சென்றுள்ளது என்றால் சரிதான்.”

The above would also show that the sniffer dog has passed through the house of said Prabhu @ Manish. It is very unfortunate that the Investigating Officer has totally ignored not only the complaint of P.W.1, but their version with regard to the previous enmity of the said Prabhu @



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Manish and also the clue given by the sniffer dog.

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29.We also find that even during the deposition in Court, P.W.1 and P.W.2 have reiterated that they had suspected the involvement of the said Prabhu @ Manish in the crime. Thus, we find that, apart from not establishing the circumstances against the appellant in a cogent manner, the Investigating Officer has ignored the evidence of P.W.1 and P.W.2 as regards the involvement of one Prabhu @ Manish. Therefore, we are of the view that the circumstances do not point out conclusively only to the guilt of the appellant and hence, the judgment of the trial Court is liable to be set aside.

30.In fine, this Criminal Appeal is allowed and the judgment of conviction and sentence passed by the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Villupuram, dated 31.08.2015, in S.C.No.306 of 2014, is set aside.



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31.The appellant is acquitted of all the charges framed against her.

The appellant is directed to be set at liberty forthwith unless she is required in connection with any other case. Fine amount, if any paid by the appellant, shall be refunded to her.

(S.S.S.R., J.) (S.M., J.)
30.11.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

- 1.The Sessions Judge,
Magalir Neethimandram
(Fast Track Mahila Court),
Villupuram.
- 2.The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram.
- 3.The Superintendent,
Women Special Prison,
Vellore.
- 4.The Public Prosecutor,
High Court, Madras.

S.S. SUNDAR, J.



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