



Crl.A.Nos.9 and 129 of 2020,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	24.07.2024
DELIVERED ON	02.08.2024

CORAM:

THE HON'BLE MR. JUSTICE M.S.RAMESH
and
THE HON'BLE MR. JUSTICE SUNDER MOHAN
Crl.A.Nos.9 and 129 of 2020

Crl.A.No.9 of 2020

Arul Joe

...Appellant/A2

VS.

State by Inspector of Police
Veerapandi Police Station,
Tiruppur District,
Crime No.649 of 2016

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (ii) of Cr.P.C. seeking to set aside the judgment and conviction dated 14.11.2019 rendered by the Mahalir Needhimandram (Fast Track Mahila Court) Tiruppur, acquit the accused from all charges framed against him.



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Ravi @ Ravikumar

... Appellant/A1

VS.

State represented by
Inspector of Police,
Veerapandi Police Station,
Tiruppur District,
Crime No.649 of 2016

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C. seeking to set aside the judgment of conviction dated 14.11.2019 made in S.No.70 of 2017 on the file of the Magalir Needhimandram (Fast Track Mahila Court) Tiruppur.

For Appellant
in both the cases : Mr. R.Vivekananthan

For Respondent
in both the cases : Mr.E.Raj Thilak
Additional Public Prosecutor

COMMON JUDGMENT

These Criminal Appeals have been filed by Accused Nos.1 and 2, challenging the conviction and sentences imposed upon them vide judgment



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dated 14.11.2019 in S.C.No.70 of 2017 on the file of the learned Sessions Judge, Magalir Needhimandram (Fast Track Court Mahila Court) Tiruppur.

2. As both the appeals arise out of a common judgment of the trial Court, they are taken up together, heard and disposed of by this common judgment. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the trial Court.

3(i) It is the case of the prosecution that the appellants/A1 and A2 were working in a Power Loom that was owned by the brother of the deceased/P.W.3; that the appellants had seen the deceased visiting the Power Loom, wearing jewels lavishly; that they then came to know that the deceased had abundant jewels in her house and therefore, decided to do away with the deceased and take away the jewels; that on 29.10.2016, they trespassed into the house of the deceased, armed with knives and attacked the deceased with their knives, causing her death and took away the jewels to the tune of 32.5 Sovereigns and cash to the tune of Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand only).



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(ii) On information given by a relative Muthukutty, P.W.1/daughter-in-law of the deceased, rushed to the house of the deceased and found her mother-in-law/the deceased lying in a pool of blood. She also found that the jewels worn by the deceased and jewels in the almirah were missing. Hence, she lodged a complaint [Ex.P1] with the police. She stated in the said complaint that the deceased was last seen with an employee named Narayanaswamy working on their land; and that the CCTV camera was also stolen.

(iii) One Abdul Nigar/the Sub Inspector of Police [not examined] registered the complaint in Crime No.649 of 2016 for the offences under Sections 449, 302, and 380 of the IPC. P.W.16/the Inspector of Police, took up the investigation, went to the scene of the occurrence at about 9.45 a.m. on 30.10.2016, and prepared the Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P19], seized the blood-stained earth and earth that was not blood-stained, and also the blood-stained eyeglasses and other articles. Thereafter, he conducted an inquest over the body of the deceased between



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12.00 noon and 3.00 p.m., in the presence of Panchayatars and prepared the inquest report [Ex.P20]. He also took the specimen fingerprint of the deceased in the presence of the witnesses. He thereafter sent the body of the deceased for conduct of a post-mortem, which was conducted by P.W.15/doctor who issued post-mortem certificate [Ex.P16] and final opinion [Ex.P17].

(iv) P.W.16 examined the other witnesses and P.W.14 lifted two chance fingerprints from the table and the almirah in the house of the deceased. He thereafter seized the blood stained dress materials of the deceased after the post-mortem was conducted and sent it under Form 95 to the Court. He recorded the further statement of the complainant on 03.11.2016, stating that she had omitted to mention about the missing cash. He thereafter took steps to nab the accused and obtained the fingerprints of the employees working under the deceased, who was running a dyeing company. He had sent their fingerprints to the Fingerprint Bureau to compare it with the chance fingerprints taken at the scene of the occurrence. However, since none of them tallied, he could not identify the accused.



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Thereafter, he took the fingerprints of the employees working under P.W.3, including the appellants, and sent the same to the Inspector, working in the Fingerprint Bureau on 02.12.2016 and on the report of the Inspector that the chance fingerprints tallied with the fingerprints of the appellants, he arrested the appellants/accused, when they were travelling together at 7.00 p.m. on 02.12.2016.

(v) On the confession of the accused, he had seized the jewels from the house of A1 between 7.15 p.m. and 9.00 p.m., on the same day. He went to the house of A2 and seized a few jewels and cash from his residence. He thereafter, went to the village of A2 and also seized some more jewels and cash in the presence of witnesses. Thereafter, he sent the seized articles to Court and made attempts to locate the CCTV cameras and the cellphone, which the accused had allegedly dropped in a canal. However, he could not locate the same. After examination of all the witnesses, including the Forensic Science Experts and the Doctors, he filed the Final Report on 22.02.2017 for the offences under Sections 457, 449, 394 r/w 397 and 302



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of the IPC against the appellants before the learned Judicial Magistrate No.IV, Tiruppur.

(vi) On the appearance of the appellants, the provisions of Section 207 of the Criminal Procedure Code were complied with, and the case was committed to the Court of Sessions in S.C.No.70 of 2017 and was made over to the learned Sessions Judge, Mahalir Needhimandram (Fast Track Mahila Court) Tiruppur for trial. The Trial Court framed charges under Sections 449 r/w 457, 394 r/w 397 and 302 of the IPC as against the appellants, and when questioned, the appellants pleaded 'not guilty'.

(vii) The prosecution examined 16 witnesses as P.W.1 to P.W.16, marked 24 documents as Ex.P1 to Ex.P24, and 30 material objects as M.O.1 to M.O.30. The appellants have not examined any witnesses or marked any documents.



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(viii) The Trial Court, after considering the oral and documentary evidence, found the appellants guilty of the following offences and sentenced them as below:

Against	Offence under IPC	Sentence imposed
A1 and A2	Sections 449 r/w 457, and 394 r/w 397	Each of them to undergo 7 years RI with a fine of Rs.1,000/-, in default to undergo 1 year of RI, for each of the offences.
	Section 302	Each of them to undergo rigorous imprisonment for life with a fine of Rs.3,000/-, in default, to undergo 2 years of RI.
	The sentences were ordered to run concurrently.	

Challenging the same, the appellants are before this Court.

4. Heard, Mr. R.Vivekananthan, learned counsel for the appellants/A1 and A2 and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/police.

5. The learned counsel for the appellants/A1 and A2, submitted that the case is based on circumstantial evidence and has not been established conclusively; that the prosecution relies upon the circumstance of the recovery of jewels and the fact that the chance fingerprints lifted from the



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scene of the occurrence tallied with the fingerprints of the appellants; and that there are lapses, hence, none of the circumstances can be believed and in any case do not conclusively establish the guilt of the appellants.

6. The learned Additional Public Prosecutor, *per contra*, submitted that the prosecution has examined as many as 16 witnesses and all the circumstances have been conclusively established and point out only to the guilt of the accused; that the gold articles seized from the possession of the accused, which was identified by P.W.1 in Court, and the fingerprint expert proved beyond reasonable doubt, the involvement of the appellants; and that therefore, there is no reason to interfere with the Judgment of the trial Court and prayed for dismissal of the appeals.

7. We have carefully considered the rival submissions and perused the materials available on record.

8. As stated earlier, the prosecution had examined 16 witnesses. P.W.1 is the de facto complainant and the daughter-in-law of the deceased,



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who first found the deceased lying dead on information given by her relative Muthukutty who was not examined by the prosecution. She had listed out certain articles as missing from the body of the deceased and from the almirah. On 03.11.2016, she is said to have given another statement in which she stated that cash and a few other jewels were also missing. P.W.2 and P.W.3, who were the son and brother of the deceased, corroborated the version of P.W.1. P.W.4 is a milk-man who had supplied milk to the deceased, saw the door of the house open, saw the deceased lying in a pool of blood and had informed the said Muthukutty. P.W.5 is the grand-son of the deceased and he is a hearsay witness. P.W.6 is the Observation Mahazar witness. P.W.7 and P.W.8 are relatives of the deceased and witnessed the confession and recovery made from the accused. P.W.9 was working as an Accountant in a concern ran by the deceased and speaks about the fact that he had handed over Rs.3,50,000/- to the deceased after distributing bonus to their employees three days before the occurrence. P.W.10 is an employee working under the deceased. P.W.11 is the Panchayat President. P.W.12 is the Assistant Engineer who speaks about uninterrupted power supply. P.W.13 is the pawn broker who assisted the



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investigating officer in weighing the jewels seized from the accused. P.W.14 is the fingerprint expert who was working in the Fingerprint Bureau and had compared the chance fingerprints and the fingerprints of the accused. P.W.15 is the Doctor who has conducted post-mortem of the deceased. P.W.16 is the investigating officer.

9. The prosecution therefore, primarily relies upon two main circumstances:

- (a) The recovery of the jewels from the accused on their confessions.
- (b) The fingerprint impression found in the table and the almirah in the house of the deceased which tallied with that of the accused.

10. We would like to first examine the evidence relating to the fingerprint examination. It is the case of the prosecution that P.W.14 who was working as a Deputy Superintendent of Police, in Fingerprint Bureau had taken the chance fingerprints from the table and the almirah in the house of the deceased. He had compared it with the specimen fingerprints of the



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accused and found that it tallied and issued a report [Ex.P15]. The relevant portion of his report reads as follows:

“But one photographed Chance Print marked as “R1” is identical with the left middle and left Ring finger prints respectively of one Ravikumar S/o.Manoharan, 140-156, Mariamman Koil Street, Anna Nagar, Gobichettipalayam, Erode District.

As per his report, it is seen that the Chance Print marked as **“R1”** tallied with the left middle and left Ring fingerprints of A1/Ravikumar S/o.Manoharan. P.W.14 is not from the Forensic Science Department. He was working in the Fingerprint Bureau of the police department. He had not assigned any reasons in his report, as to how he had come to the conclusion that Chance Print **“R1”** was identical with the left middle and left Ring fingerprints of Ravikumar/A1. That apart, there is absolutely no evidence to show that the Chance Prints lifted from the occurrence pertained to any particular finger or it had prints of all the fingers of the suspect. In such circumstances, it is not clear as to how P.W.14 found that the chance fingerprint tallied with fingerprints of two fingers of the accused. In light of the above infirmity in the report, we are of the view that the said report



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would have no value, even for the purpose of corroboration. Hence, we are not inclined to believe the report of P.W.14, marked as Ex.P15.

11. The only other circumstance is the recovery of jewels on the arrest and confession of the appellants. In the complaint, P.W.1/daughter-in-law of the deceased stated that the jewels were found missing from the person of the deceased and from the almirah. The jewels mentioned in the complaint are as follows: (a) 6 Sovereigns of Gold Chain, and 4 Sovereigns of two Bangles from the person of the deceased (b) 6 Sovereigns of Gold Chain, 5 Sovereigns of Bangle, 3 Sovereigns of Gold Coin, 1 Sovereign of Bracelet, 1 ¼ Sovereigns of Bracelet, 2 Sovereigns of Gold Kada and 2 Sovereigns of Gold Chain. However, a further statement of P.W.1/daughter-in-law of the deceased is said to have been obtained by the prosecution on 03.12.2016, after the arrest of the accused in which, P.W.1 is said to have given the exact description of the jewels. The investigating officer also admitted that in the first statement, P.W.1 had stated that she would not be able to give the description of the jewels. The relevant portion of the cross-examination of the investigating officer/P.W.16, reads as follows:



“இறந்து போன பாலமணியின் கழுத்தில் 6 பவுன் ஜெயின் இருந்ததாக புகாரிலும் அ.சா.1 ன் சுதாவின் 161 வாக்குமூலத்தில் உள்ளது என்றால் சரிதான். எதிரிகளிடமிருந்து நகைகள் கைப்பற்றப்பட்டதாக சொல்லப்படும் தேதிக்கு மறுநாள் பாலமணியின் கழுத்தில் 8 பவுன் தங்க ஜெயின் இருந்ததாக அ.சா.1 என்னுடைய விசாரணையில் சொன்னதாக வாக்குமூலம் பதிவு செய்யப்பட்டுள்ளது என்றால் சரிதான் தோடு, மோதிரங்கள் ஆகிய நகைகளின் எடை குறித்து தனக்கு தெரியாது என்று அ.சா.1 என்னுடைய விசாரணையில் முதலில் சொல்லியுள்ளார் என்றால் சரிதான். ஆனால் அவரிடம் நகைகள் மீட்கப்பட்டதற்கு பெறப்பட்ட மறு வாக்குமூலத்தில் நகைகளின் பதிக்கப்பட்ட கல்லின் விபரங்கள் அவற்றின் எடைகள் குறித்து எல்லாம் சொல்லியுள்ளார் என்றால் சரிதான். கைப்பற்றப்பட்ட நகைகள் அ.சா.1ன் முன்னிலையில் எடை போட்டு பார்த்து தான் அவர் அந்த நகைகளின் விபரங்கள் பற்றி சொல்லியுள்ளார்.”

The above portion would suggest that the details of the jewels were mentioned only in the subsequent statement that was recorded after the arrest and recovery of the gold jewels on the confession of the accused. That apart, it is seen that P.W.1 had also stated that the deceased had a gold chain weighing 8 Sovereigns after the occurrence.

12. As regards the cash, it is seen that for the first time, P.W.1 stated in her further statement said to have been recorded on 03.11.2016 that



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P.W.9/the Accountant working in the company of the deceased, had handed over Rs.3,50,000/- to the deceased after distributing Deepavali bonus to the employees. However, the said statement was despatched to the Magistrate on 01.03.2017. This apart, P.W.9/the Accountant who said to have given Rs.3,50,000/- to the deceased two days before the occurrence was examined according to the prosecution on 03.11.2016 and his statement was also sent to the Magistrate only on 01.03.2017. Therefore, both of these statements reached the Magistrate after the arrest of the accused. In our view, these statements are an afterthought and made only to suit the prosecution case after the alleged recovery of money from the accused. Hence, the witnesses cannot be believed.

13. That apart, we find that P.W.7/Mr.Senthilkumar and P.W.8/Mr.Mohanasundaram who are the witnesses to the confession and recovery of jewels, are both closely related to P.W.1. The relevant portion in the evidence of P.W.1 reads as follows:

“பாரப்பாளையம் செந்தில்குமார், முருகம்பாளையம்
மோகனசுந்தரம் ஆகியோர் என மாமியாருக்கு மிக



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நெருக்கமானவர்கள் என்றால் சரிதான் அவரது இறப்பு சடங்கில்
எல்லாம் கலந்து கொண்டார்கள் என்றால் சரிதான்.”

The fact that no independent witness was examined to witness the arrest and confession, thus raises doubt. However, we cannot suspect, in all cases, the recovery and confession merely because they were witnessed by the relatives of the victim. In this case, both P.W.7 and P.W.8, strangely deny their relationship with the deceased, which is contrary to the evidence of P.W.1 and makes their version doubtful considering the other facts and circumstances that we have narrated above. Therefore, the recovery of articles, in the light of the above infirmities, cannot be considered as a circumstance against the accused.

14. Even assuming that the recovery is established, it does not prove the offence of the murder of the deceased. It only proves the fact that the accused had knowledge as to where the jewels were kept. There are no other circumstances established by the prosecution, and as stated earlier, we have found that the fingerprint examination is doubtful. That apart, it is P.W.1's case that a villager one Muthukutty, informed that her mother-in-



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law was done to death. However, for the reasons best known to the prosecution, the said Muthukutty was not examined. P.W.4/the milkman, who said to have allegedly seen the deceased lying in a pool of blood on the morning of 30.10.2016 had informed Muthukutty. Further, we also find that the blood groups in the blood-stains from the weapons and dress materials said to have been seized from the accused could not be ascertained. Therefore, the same could not be compared with the blood group of the deceased. The CCTV camera is said to have been stolen and could not be recovered by the police. Therefore, we are of the view that the prosecution has failed to establish its case beyond reasonable doubt, and hence, the appellants are entitled to acquittal.

15. As a result, **Crl.A.Nos.9 and 129 of 2020** are allowed. The conviction and sentence imposed on the appellants/accused 1 and 2, in S.No.70 of 2017 on the file of the learned Sessions Judge, Magalir Needhimandram (Fast Track Mahila Court) Tiruppur vide judgment dated 14.11.2019, are set aside. The appellants [A1 and A2], are acquitted of all charges levelled against them, and they are directed to be released forthwith



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unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

(M.S.R., J.) (S.M., J.)
02.08.2024

Speaking/Non-speaking order

Neutral Citation: Yes/No.

dk

To

1. The Sessions Judge,
Magalir Needhimandram (Fast Track Mahila Court)
Tiruppur.
2. The Inspector of Police
Veerapandi Police Station,
Tiruppur District,
3. The Superintendent of Prisons,
Central Prison Coimbatore.
4. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.



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and
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Pre-delivery Common judgment in
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Dated: 02.08.2024