



Crl.A.No.90 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.06.2024
Pronounced on	16.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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Kaleel Rahman @ Rahman @ Ragu ...Appellant

Vs.

Inspector of Police,
Orleanpet Police Station,
Puducherry. ...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence imposed by the Principal Sessions Judge at Puducherry in S.C.No.70/2008 by judgment dated 13.10.2017.

For Appellant : Mr.K.Maharaja

For Respondent : Mr.K.S.Mohan Das,
Public Prosecutor (Puducherry)



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JUDGMENT

M.S.RAMESH,J.

The appellant herein has been convicted and sentenced to the following imprisonment, through the judgment of the Principal Sessions Court, Puducherry, dated 13.10.2017, passed in Sessions Case No.70/2008:-

“The prosecution has proved the guilt of the accused and the accused is guilty under Section 302 and 380 IPC and accused is convicted and sentenced to undergo imprisonment for life for the offence punishable under Section 302 IPC and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for one year. For the offence punishable under Section 380 IPC, the accused is convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months.”

2. The aforesaid judgment is under challenge in the present appeal.

For the sake of convenience, the parties to the appeal are addressed according to the rank in the trial Court.



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3. The case of the prosecution is that, on 27.06.2008 at 09.00 P.M. at Room No.203, Royal Lodge, Maraimalai Adigal Salai, Puducherry, the accused, namely Kaleel Rahman @ Rahman @ Ragu, caused the death of one Selvi, wife of Padmanaban, by immersing her head in a bucket filled with water, as she refused to part with her thali and saradu, with the knowledge that such an act would likely cause her death or would be sufficient in the ordinary course of nature to cause her death and therefore was liable to be punished under Section 302 of the Indian Penal Code (IPC). Thereafter, since he had stolen the jewels of the deceased, he was liable to be punished for the offence of theft, punishable under Section 380 IPC.

4. The Judicial Magistrate-II Puducherry, took cognizance of the offences and on the appearance of the accused, the copies of the documents, relied on by the prosecution to substantiate the allegations mentioned in the charge sheet, were furnished to him, as envisaged under Section 207 of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.'). Since the charges related to the offence punishable under Section 302 IPC, the case was committed to the Court of the Principal Sessions Judge at Puducherry in



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P.R.C.No.34/2008 on 06.11.2008 under Section 209(a) Cr.P.C. When the charges framed against the accused for the offence under Sections 302 and 380 IPC were read over and explained to him, he had denied the charges and pleaded of 'not being guilty'.

5. To prove the charges against the accused, the prosecution had examined P.W.1 to P.W.20 and marked Exs.P.1 to P.28, apart from the material objects M.O.1 to M.O.16. The accused had neither examined any witnesses nor marked any documents on his side. Following are some of the relevant statements made by the prosecution witnesses during trial:-

5.1. P.W.1-Muthukumaran, who was the Manager of the Royal Lodge, Maraimalai Adigal Salai, Puducherry, had registered the stay of the accused and the deceased at their lodge on 26.06.2008 at 01.15 P.M. and allotted them to Room No.203, through whom the advance receipt (Ex.P.1) and the complaint dated 27.06.2008 (Ex.P.2) given by him were marked through him.

5.2. P.W.2-Suresh, who had seen the dead body after the incident, was treated as a hostile witness by the prosecution.



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5.3. P.W.3-Selva Ranjith Kumar is the Manager, who had taken charge after P.W.1 had allotted them to Room No.203. He is also the witness, who had informed the Police that there was no response from Room No.203 and thereafter, when the Police had broke open the door of the room, he had seen the decomposed body of the deceased, whose head was immersed in a bucket filled with water. Through P.W.3, the seizure mahazar (Ex.P.3), along with a steel bucket (M.O.1), a pair of black colour lady's footwear (M.O.2), a grey colour churidhar with blue colour flower design on it with duppatta (M.O.3) and a black color rexin bag printed as 'adidas' (M.O.4) were marked.

5.4. P.W.4-Ramados is the room boy, who had cleaned Room No.203 before it was allotted to the accused and the deceased. He also claims to have bought meals and two beer bottles for the accused on 26.06.2008 at 01.30 P.M., at which point of time, both the accused and deceased were together and also claims to have seen the accused alone at 07.00 P.M. on the same day. He had also signed the memo of arrest (Ex.P.4) as a second witness.

5.5. P.W.5-Padmanaban is the husband of the deceased, who had



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identified the dead body.

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5.6. P.W.6-Mala is the mother-in-law of the deceased, who claims to have received a phone call from the deceased at 07.00 P.M. on 26.06.2008, after she reached Puducherry. She had identified the body of the deceased at the mortuary. She also claims that she had identified the gold ornaments worn by the deceased, along with the mobile phone, in the Police Station at the request of the Police.

5.7. P.W.7, P.W.8 and P.W.9 are the relatives of the deceased, who are hearsay witnesses.

5.8. P.W.10-Murugesan is a friend of P.W.7 and P.W.8, who had signed (Ex.P.5) as a witness to the inquest report (Ex.P.19).

5.9. P.W.11-Mani Ilango is a witness to the seizure mahazar (Ex.P.7).

5.10. P.W.12-Surendar is a gold smith, who had stated that the accused had sold one thali chain saradu (M.O.9) and a yellow ornament (pottu) (M.O.10). As per P.W.12, he had identified that these jewels were received by him from the accused before the Police.

5.11. P.W.13-Ansari is a friend of the accused, who had signed (Ex.P.8) the seizure mahazar (Ex.P.6) and who speaks about having



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exchanged the cell phone of the accused with his cell phone.

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5.12. P.W.14-Venkataraman is a witness to the seizure mahazar (Ex.P.3), wherein his signature was marked as Ex.P.11. He claims to have been present when the evidences in the scene of occurrence were collected and through him, a safety pin (M.O.8), a white colour polythene cover (M.O.11), a broken beer bottle (M.O.12), an unopened beer bottle (M.O.13) and a pair of ear stud (M.O.14) were marked.

5.13. P.W.15-Jagadesan is the Inspector of Police attached to the Finger Print Bureau, who had taken the chance prints from the scene of occurrence and had compared the finger prints of the accused. The finger print reports sent to the Court and the finger print clues were all marked as Exs.P.12, P.13 and P.14.

5.14. P.W.16 is the doctor, who had conducted the autopsy on the body of the deceased and submitted the postmortem report (Ex.P.15), by recording the following injuries:-

“External injuries – 1) an abrasion of 1 cm x 1 cm over the back of the neck in the midline (peeling of the skin seen over the back of chest and back of the left leg postmortem in nature).



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Internal examination – (brain) 1) decomposed, discoloured, clayish & diffluent, 2) diffuse bruising of 8 cms x 4 cms, over the right side outer aspect of the neck, subcutaneous; Neck structure (hyoid) – left side cornu found fractured, which is postmortem in nature; Thorax – pleural cavity – both empty, lungs right left – both decomposing, heart and pericardium – flabby, empty and decomposing; Abdomen and Pelvis – Abdominal wall – Lineae albicantes present, Peritoneum – empty, stomach and contents – contained partly digested, cooked rice particles in a pale yellowish fluid, with a pungent odour. Mucosa decomposed, Liver and Gall bladder, spleen, pancreas, kidneys, ureters and adrenals – decomposing, Urinary bladder – empty, Genital organs – Uterus empty; menstrual changes seen. Evidence of bilateral tubectomy present (birth control).”

As per his final opinion (Ex.P.17), the death was due to '*Asphyxia, as a result of compression of the neck*'.

5.15. P.W.17-Sridhar, who was the then Sub-Inspector of Police, Orleanpet Police Station, had received the phone call from P.W.1 and after going to the lodge, he had broke open the door lock of Room No.203 and



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witnessed the body of the deceased and the other evidences therein.

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5.16. P.W.18-Veeravallaban, who was the then Inspector of Police, had conducted the initial investigation of the crime and handed over the case file to Bairavasamy (P.W.20), Inspector of Police, who had taken up further investigation in the case.

5.17. P.W.19-Arunagiri, is the Nodal Officer of AIRCEL, who had collected the call details of the mobile phone of the deceased (Mobile No.9710117523), through the call details record (CDR) (Ex.P.20) and sent the details to the Superintendent of Police (North).

5.18. P.W.20 commenced his investigation by collecting the call details of the mobile phone of the deceased and when he found frequent calls being made to Mobile No.9789036213, he had collected the call details of the recipient number (Ex.P.21) and having found that the same belonged to the accused, he had arrested the accused and recorded his voluntary confession statement, the admitted portion of which is Ex.P.22, whereby the accused is said to have admitted of having murdered the deceased by immersing her head in a water-filled bucket and had drowned her. He then had removed her thali saradu and left the scene. Based on his



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confession, the accused had identified P.W.12, to whom he had sold M.O.9 and M.O.10 and seized the same through a seizure mahazar (Ex.P.7) and he also seized a Nokia mobile phone (M.O.15) and a bank counter foil (Ex.P.24) for Rs.10,000/- under a seizure mahazar (Ex.P.25). After obtaining the viscera report and the postmortem report, together with the final opinion, from the postmortem doctor (P.W.16) and after recording the statement of the witnesses, he laid a final report before the Sessions Court, charging the accused for having committed the offence under Sections 302 and 380 IPC.

6. The learned counsel appearing on behalf of the accused submitted that the jewels, which were recovered from the accused, were not properly identified to have belonged to the deceased and that the statement of P.W.6 and P.W.12 was insufficient to establish that the jewels belonged to the deceased. He also submitted that the present case is based on circumstantial evidence and last seen theory and when no test identification parade was conducted and the accused was identified by P.W.1 in the Court after eight years, it throws a huge doubt on the identification itself. He further



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submitted that the entire investigation was based on the phone calls recorded on the mobile phone of the deceased and the accused and though the call details of both the mobile phones of the deceased were marked, the same were not accompanied by the mandatory certificates under Section 65B of the Indian Evidence Act, 1872.

7. Per contra, the learned Public Prosecutor, appearing for the respondent, submitted that when the Manager of the Royal Lodge (P.W.1), where the occurrence had taken place, as well as the room boy of the Lodge (P.W.4), who had attended both the accused and the deceased, had last seen them together and had also deposed cogently, it is for the accused to explain his presence at the scene of occurrence, as required under Section 106 IPC. By placing reliance on the evidence of P.W.1 and P.W.4, he submitted that both of them had clearly spoken about the accused staying with the deceased in the room and have also identified them at the time of trial and therefore, the identification of the accused has been established. He further placed reliance on the evidence of finger print expert (P.W.15) and stated that since this witness has spoken about the matching of chance prints, from



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the scene of occurrence with the sample prints of the accused, an inference requires to be drawn that it was the accused who had committed the offence.

According to the learned Public Prosecutor, since P.W.16, who was the Doctor who conducted the postmortem, had in his final opinion stated that the death was caused due to Asphyxia, as a result of compression of the neck, it has been clearly established that the accused had caused the death of the deceased by immersing her head in the water-filled bucket.

8. We have given our anxious consideration to the arguments made by the respective counsels and have perused the original records available.

9. This is a case of circumstantial evidence and in order to substantiate the charges against the accused, the prosecution has put forth the following circumstances to implicate the accused as responsible for the death of the deceased:-

(a) identity of the deceased and death of the deceased at Room No.203, Royal Lodge, Maraimalai Adigal Salai, Puducherry;

(b) the deceased was last seen in the company of the accused;



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(c) arrest of the accused and recovery of the material objects pursuant to his confession, as per Section 27 of the Indian Evidence Act.

(d) opinion of the finger print expert placing the finger prints of the accused at the scene of occurrence;

(e) CDR particulars of the mobile phone of the deceased; and

(f) conduct of the accused.

10. The deceased has been identified to be one Selvi, who is the wife of P.W.5 and daughter-in-law of P.W.6. From the evidence of the doctor (P.W.16), it is established that the deceased has died due to Asphyxia, as a result of compression of the neck and therefore, the death is a case of homicide.

11. The motive attributed by the prosecution on the accused for causing the death is that the deceased had refused to part away with her gold jewels. The Investigating Officer (P.W.20) had arrested the accused on 02.07.2008 at 04.30 P.M. According to him, the accused had voluntarily confessed to the crime and based on his confession, the jewels, which he



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had stolen from the body of the deceased, were recovered from P.W.12, to whom the prosecution claims that the accused had sold the jewels for Rs.48,100/-. It is the case of the prosecution that in view of Section 27 of the Indian Evidence Act, the recovery, based on the confession of the accused, establishes that the accused had caused the death for monetary gain of the jewels.

12. Insofar as the recovery is concerned, P.W.6 and P.W.12 are the only two witnesses, who have identified the jewels. P.W.6, who is the mother-in-law of the deceased, in her oral testimony, has spoken in this regard as follows:-

“பிறகு புதுச்சேரி உருளையன்பேட்டை காவல்நிலைய அழைப்பின் படி நான், என்கணவர், அ.சா.5 மூவரும் காவல்நிலையம் வந்து அங்கு ஆய்வாளர் காட்டிய நகைகள் 1. தாலிச்செயின், 2. ஒரு ஜோடி கம்மல், 3. ஒரு முக்குத்தி ஆகிய நகைகளை செல்வி அணிந்திருந்த நகைகள் தான் என்று சொல்லி அடையாளம் காட்டினேன். மேலும் ஒரு கைப்பேசியையும் அடையாளம் காட்டினேன். போலிசார் என்னை விசாரித்து வாக்குமூலம்



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பதிவு செய்தார்கள்.”

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13. Apart from the above statement, the jewels, namely M.O.9, M.O.10 and M.O.14, were not shown to her during the course of trial. On the other hand, her statement is only to the effect that the Investigating Officer had shown her the jewels at the Police Station during the course of investigation, at which point of time, she claims to have confirmed that these gold jewels belonged to her daughter-in-law. Such an identification of the jewels and claiming it to have belonged to the deceased, before the Police Authorities, is an inadmissible piece of evidence to substantiate that the jewels belong to that of the deceased.

14. The admissibility of statements made by a witness before the Police, *vis-a-vis* identification of properties, was dealt with in the case of ***Ramkishan Mithanlal Sharma Vs. State of Bombay*** reported in (1954) 2 ***SCC 516***, wherein it was held that such an identification would attract Section 162 Cr.P.C. and thus become inadmissible in law. The relevant portion of the judgment reads as follows:-

“21. If this background is kept in view it is clear.



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that the process of identification by the identifying witnesses involves the statement by the identifying witnesses that the particular properties identified were the subject-matter of the offence or the persons identified were concerned in the offence. This statement may be express or implied. The identifier may point out by his finger or touch the property or the person identified, may either nod his head or give his assent in answer to a question addressed to him in that behalf or may make signs or gestures which are tantamount to saying that the particular property identified was the subject-matter of the offence or the person identified was concerned in the offence. All these statements express or implied including the signs and gestures would amount to a communication of the fact of identification by the identifier to another person.

22. The distinction therefore which has been made by the Calcutta and the Allahabad High Courts between the mental act of identification and the communication thereof by the identifier to another person is quite logical and such communications are tantamount to statements made by the identifiers to a police officer in the course of investigation and come.



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within the ban of Section 162. The physical fact of identification has thus no separate existence apart from the statement involved in the very process of identification and insofar as a police officer seeks to prove the fact of such identification such evidence of his would attract the operation of Section 162 and would be inadmissible in evidence, the only exception being the evidence sought to be given by the identifier himself in regard to his mental act of identification which he would be entitled to give by way of corroboration of his identification of the accused at the trial. We therefore approve of the view taken by the Calcutta and the Allahabad High Courts in preference to the view taken by the Madras High Court and the Judicial Commissioner's Court at Nagpur.”

(emphasis supplied)

15. Apart from P.W.6, P.W.12 also speaks about the jewels and the manner in which it came to his possession. The following are the statements in this regard:-

“சம்பவ தேதியில் இருந்து சில
மாதங்களுக்கு முன்பு எதிரியை சிங்கம் பெருமாள்



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கோயிலை சேர்ந்தவர் என்று எனக்குத் தெரியும். சரடு 40 கிராம் எடையுடையது பொட்டு 3.940 கிராம் எடையுடைய நகைகளை வாங்கிக்கொண்டு அதற்கு ரூ 48,100யை ஆஜர் எதிரியிடம் கொடுத்தேன் சம்பவத்திற்கு பிறகு 13 நாட்கள் கழித்து புதுச்சேரியில் இருந்து காவல்துறையே சேர்ந்தவர்கள் கூடவாஞ்சேரியில் உள்ள என்னுடைய கடைக்கு வந்தார்கள். அவர்களுடன் ஆஜர் எதிரியிடம் நகை வாங்கினாயா என்று என்னை கேட்டார். நான் அதற்கு வாங்கியது உண்மைதான் என்று கூறினேன் அன்றைய தினம் மதியம் 2.00 மணிக்கு அந்த நகைகளை ஆய்வாளர் கைப்பற்றுவதற்காக கேட்டதன் பேரில் மேற்படி சரடு மற்றும் பொட்டையும் ஆய்வாளரிடம் கொடுத்தேன். மகசரில் நகைகளை கைப்பற்றியதற்கு நான் கையெழுத்து செய்துள்ளேன். அந்த கைப்பற்றுதல் மகசர் தான் அ.சா.ஆ.-7. என் கையெழுத்துக்கு கீழே உள்ளது என்னுடைய கடையின் விலாசம் உள்ள முத்திரை சாட்சியிடம் காட்டப்பட்ட சரடு மற்றும் பொட்டு ஆகியவற்றை தான் போலிசாரிடம் ஆஜர்படுத்தியது என்று அடையாளம் காட்டினார் அந்த சரடு சா.பொ.9 பொட்டு சா.பொ.10 நகைகளை என்னுடைய அலுவலகத்தில் உள்ள



உடைப்பு கல்லால் உரைத்து பார்த்து சான்று
பொருட்கள் 9 மற்றும் 10 தங்கத்தால் ஆனது
என்று உறுதி செய்து கொண்டேன்.”

16. Two important factors arise from the evidence of P.W.12, which throws a serious doubt with regard to the recovery by the Investigation Officer (P.W.20). Firstly, the jewels, which were seized by the Police from P.W.12, were identified by him only in the Police Station and not during the course of trial. Curiously, M.O.9 and M.O.10 were not produced and shown to both P.W.6 and P.W.12 for ascertaining the ownership of these jewels. As stated above, such a manner of identification in the Police Station with regard to the ownership of the jewels is impermissible in law. Secondly, even if the statement of P.W.12 can be relied upon, the prosecution can, at the most, rely on his statement for the limited purpose of linking the jewels with the accused and not to establish that the same belonged to the deceased.

17. The statements of these two witnesses, put forth by the prosecution to correlate the ownership of the jewels (M.O.9 and M.O.10)



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with that of the deceased, stands discredited and thus, the prosecution have failed to establish the vital link of motive, in the chain of circumstances.

Apart from these two witnesses, there are no other evidences in hand to hold that the jewels belonged to the deceased and hence, the very basic foundation of the prosecution's case that the accused had committed the murder for gain, has collapsed.

18. In a case of circumstantial evidence, motive is a crucial piece of link to complete the chain of events. The importance of motive being present as crucial link in a case of circumstantial evidence, was discussed in a recent decision of the Hon'ble Supreme Court in the case of ***Indrajit Das Vs. State of Tripura*** reported in ***2023 SCC OnLine SC 201***, in the following manner:-

“15. In a case of circumstantial evidence, motive has an important role to play. Motive may also have a role to play even in a case of direct evidence but it carries much greater importance in a case of circumstantial evidence than a case of direct evidence. It is an important link in the chain of circumstances. Reference may be made to the following two judgments



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on the importance of motive in a case of circumstantial evidence:

- (1) *Kuna Alias Sanjaya Behera v. State of Odisha*
– (2018) 1 SCC 296; and
(2) *Ranganayaki v. State by Inspector of Police* –
(2004) 12 SCC 521.”

19. There is yet another crucial flaw in the investigation relating to the identity of the accused. P.W.1 is the Manager of the Royal Lodge, where the occurrence took place. In his testimony, he states that on 27.06.2008, when he was on duty from 08.00 A.M. to 08.00 P.M., the accused, claiming his name as “Ragu”, along with his wife Selvi, came to the lodge at about 01.15 P.M. and sought for a room, stating that he had come to visit JIPMER Hospital for treatment of his wife, who is a tuberculosis patient. He then registered them in their hotel register and collected Rs.300/- as advance, by issuing an advance receipt (Ex.P.1) and allotted them to Room No.203. Apart from this short interaction, he had not seen the accused or the deceased at any later point of time. P.W.4 is the room boy, who had taken the accused and the deceased to Room No.203, after they had checked in the



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lodge. As per his oral testimony, one 'Kaleel Rahman', along with his wife Selvi, had booked the room with P.W.1. He then took Kaleel Rahman to Room No.203 and after cleaning the room, he had handed over the key to the accused. He had thereafter met the accused in the room at 01.30 P.M. for buying them meals. At 07.00 P.M. on the same day, he had gone to Room No.203 for getting dinner, at which point of time, the accused had asked him to come by 07.00 A.M. on the next day for getting them coffee. On the next day at 07.00 A.M., when he had gone there, the room was locked from outside, which fact he had informed to the Manager (P.W.3). This is the brief introduction of P.W.4 with the accused and the deceased.

20. Curiously, P.W.4 had addressed the accused as 'Kaleel Rahman', when the evidence available in the hotel, at that relevant point of time, showed the name of the accused only as 'Ragu'. Even when P.W.1 was originally examined on 01.10.2015, he had all along referred to the name of the accused as 'Ragu'. Thereafter, P.W.1 was recalled once again on 03.08.2016 only for the limited purpose of identifying the accused, at which point of time, he had stated that the accused, who is present before him, was



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Kaleel Rahman. Even in the advance receipt (Ex.P.1), the name of the accused has been mentioned only as 'Ragu'. How, P.W.4, who had last seen the accused, came to know the name of the accused as Kaleel Rahman, has not been explained by the Investigating Officer also. Thus, this creates a strong suspicion on the testimony adduced by P.W.4 with regard to the identity of the accused.

21. P.W.1 and P.W.4 are the only two witnesses let in by the prosecution, claiming that they had last seen the deceased in the company of the accused. Both had not known or seen the accused earlier. Admittedly, there was no test identification parade conducted in the present case. After 26.06.2008, both P.W.1 and P.W.4 had identified the accused only on 03.08.2016 and 28.02.2017 respectively during the course of their chief examination, which is after about 8 years. When both P.W.1 and P.W.4 knew the name of the accused only as 'Ragu' when they had last seen him on 26.06.2008, how did they suddenly identify him as Kaleel Rahman when they had seen him during the course of trial. Apparently, there is a strong suspicion that both these witnesses could have been tutored by the Police to



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refer the accused by the name of Kaleel Rahman.

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22. We have also taken note of the fact that both P.W.1 and P.W.4 could have interacted with the accused only for a very few minutes. However, they seem to have such a remarkable memory of recollecting the identity of the accused, after 8 years, in the Court room, more particularly, when both P.W.1 and P.W.4, were total strangers to the accused. In the absence of a test identification parade being conducted, such identification creates a serious suspicion on the investigation itself and with regard to the identity of the accused.

23. In the case of ***Kannan and Others Vs. State of Kerala*** reported in ***(1979) 3 SCC 319***, the Hon'ble Supreme Court had held that, where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless, unless there has been a previous test identification parade to test his powers of observation. It was further held therein that the idea of holding test identification parade under Section 9 of the Evidence Act is to test the veracity of the witness on the



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question of capability to identify an unknown person whom the witness may have seen only once. If no test identification parade is held, then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court.

24. Thus, in line with the aforesaid decision, we are of the affirmed view that it was incumbent on the part of the prosecution to have arranged for a test identification parade and ascertain the identity of the accused, before the witnesses were called upon to testify before the Court, in the presence of the accused.

25. In the light of the above discussions, the other circumstance put forth by the prosecution, with regard to the last seen theory itself casts a serious doubt as to whether P.W.1 and P.W.4 had witnessed the accused in the company of the deceased.

26. One of the crucial piece of evidence that P.W.20 had collected during investigation, leading to the arrest of the accused and recovery of the



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material objects, were the call details in Excel format from the AIRCEL mobile phone of the deceased bearing Mobile No.9710117523, as well as that of the accused Mobile Phone No.9789036213. As per the testimony of P.W.20, the investigation seems to have commenced by relying upon the call details of the deceased's mobile phone and enquiring the persons who had made or received calls from her mobile. P.W.19 is the Nodal Officer of AIRCEL, from whom he had collected the CDR details (Ex.P.20) of the deceased's mobile number in Excel format. P.W.20 had confirmed that most of the calls from and to the mobile phone of the deceased, were of the mobile phone of the accused, thereby confirming his relationship with the deceased. However, the CDR particulars in Excel format (Ex.P.20), when marked, was not supported with a certificate under Section 65B of the Indian Evidence Act. The requisition sent to AIRCEL company by P.W.18, seeking for CDR of the deceased mobile number, was also not marked by the prosecution.

27. To aggravate the flaws in the investigation, P.W.20 had produced the CDR particulars of the AIRTEL mobile number of the accused and he



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himself had marked it as Ex.P.21. The Nodal Officer of AIRTEL, who had supplied these CDR details, was not examined as a witness. Nor was Ex.P.21 accompanied by a certificate under Section 65B of the Indian Evidence Act.

28. The sanctity attached to the admissibility of an electronic evidence produced before the Court without certifying it, as required under Section 65B of the Indian Evidence Act, has time and again been dealt with by the Hon'ble Supreme Court, as well as various other High Courts, by holding that no credence or reliability could be given to such a piece of evidence without the mandatory authentication. Some of the leading decisions touching upon the admissibility of electronic evidence, in terms of Section 65B, are (1) *Arjun Panditrao Khotkar Vs. Kailash Kushan Rao Gorantyal* reported in (2020) 7 SCC 1; (2) *Sonu Vs. State of Haryana* reported in (2017) 8 SCC 570; (3) *Ravinder Singh alias Kaku Vs. State of Punjab* reported in (2022) 7 SCC 581; and (4) *Anvar P.V. Vs. P.K.Basheer* reported in (2014) 10 SCC 473.



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29. In a recent decision, in the case of *Yuvaraj Vs. State represented by The Additional Superintendent of Police, CBCID, Namakkal District* reported in **2023 SCC Online Mad 3621**, a Coordinate Bench of this Court, in which one of us (*MSRJ*) was a part, had dealt with the aforesaid decisions and ultimately held in paragraph 202 therein that, the certificate under Section 65B(4) of the Indian Evidence Act is a condition precedent to the admissibility of electronic records and further held that, oral evidence cannot be a substitute for a certificate under Section 65B(4) of the Indian Evidence Act. Adverse observations were also made on the CDR document marked in Excel format. Thus, if the CDR particulars (Ex.P.20) are to be disregarded for want of a Section 65B certificate, the very foundation on which the investigation had commenced, would collapse.

30. Thus, from the testimonies of P.W.19 and P.W.20, as well as Exs.P.20 and P.21, the only conclusion P.W.20 could have arrived is that, both the accused and the deceased knew other, but he could not have drawn an inference that both of them were together in Room No.203 of Royal Lodge, at the time of occurrence. Hence, it would be highly unsafe to give



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any credibility to the investigation conducted by P.W.20, touching upon the CDR details in Exs.P.20 and P.21.

31. In the case of ***State rep. by The Inspector of Police (Law & Order) Vs. P.Ponnusamy*** passed in ***R.T.No.2 of 2021***, marking of call details obtained from the mobile phone company, through a Police Officer and not by a Nodal Officer of the mobile company or an Officer who is responsible for maintaining the call details, was frowned upon by us, in the following manner:-

“E. The other circumstance is the Call Records produced through P.W.45 which according to the prosecution show that the accused and the family members of A1 to A4 were in touch with A6 and A7 and some of them were in touch with the assailants directly, is of no avail to the prosecution. Admittedly, P.W.45, the Sub Inspector of Police, Cyber Crime Branch received the details from the Telecom Companies. Strangely, none of the officers who sent this informations were examined by the prosecution. The alleged information received by P.W.45, during the course of the investigation by e-mail is sought to be proved by the prosecution with the 65-B certificate of



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P.W.45. The 65-B certificate of P.W.45 would not be of any relevance for the simple reason that the fundamental rules of evidence as to how a document has to be proved has been ignored by the prosecution. P.W.45 who represents the Police Department collected the documents on behalf of the Investigating Officer. Incidentally, in this case, he obtains it in electronic form. The document was generated from the Telecom Companies. The e-mail sent by those Telecom Companies was also not marked by the prosecution. The documents which were generated by the Telecom companies cannot be proved by the police officer who collects it during the course of the investigation. Those documents which are maintained in the computers of the respective Telecom companies ought to be proved either by the Nodal Officer or such Officer, who maintained these documents. This is a fundamental aspect which requires no further elaboration. Further, on P.W.45's own admission, these CDRs were both in Excel and PDF formats. It is common knowledge that the documents in Excel format can be manipulated or edited. This is yet another instance of shoddy investigation and introduction of documents by ignoring the basic procedure. Therefore, we are of the



view that the documents pertaining to the CDRs marked as Exs.112 to 145, through P.W.45 is not worth the paper it is printed on.”

32. We have already raised serious doubts with regard to the identity of the accused, as well as the failure on the part of the prosecution to connect the recovered jewels with the deceased and the motive. If the CDR particulars under Exs.P.20 and P.21 are also to be disbelieved, almost all the crucial links to the chain of circumstances put forth by the prosecution, would stand dislodged.

33. The prosecution had also attempted to put forth the fact that since the presence of the accused at the place of occurrence was clearly deposed by P.W.1 and P.W.4, he had failed to offer his explanation under Section 313 of Cr.P.C. as to how the deceased was murdered and thereby, an inference can be drawn from the conduct of the accused and the chain of circumstance could be completed. We had already set forth the serious doubt that arose in our minds with regard to the presence of the accused in the scene of occurrence itself, more particularly, when the testimony of P.W.1 and P.W.4,



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who had identified the accused after 8 years, and the inadmissibility of the phone calls made between the mobile phone numbers of the accused and the deceased. If that be so, no inference can be drawn from the conduct of the accused, in the absence of any other credential evidence before us.

34. The last piece of circumstance put forth by the prosecution is the opinion of the finger print expert connecting the finger print of the accused, with that of the finger print in the beer bottle (M.O.13). It is a settled legal proposition that in cases of circumstantial evidence, all the circumstances commencing from the motive leading to the ultimate death of the deceased should be cumulatively taken, so as to form a complete chain in such a way that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else. Apart from the opinion of the finger print expert, none of the other circumstances put forth by the prosecution connects the accused to the crime. Thus, even assuming that the chance finger print extracted from the scene of occurrence matches with the finger prints of the accused, we are unable to hold the entire chain of circumstance as complete, in the absence of the prosecution



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failing to cogently and firmly establish the chain. Drawing an isolated circumstance of the finger print of the accused found in the scene of occurrence and holding him guilty for the crime, would not only be dangerous, but also impermissible, in the light of several decisions on the proposition of circumstantial evidence, including the decisions referred to us above.

35. Thus, in the light of our discussions and findings, we are of the affirmed view that the prosecution has miserably failed to establish the guilt of the accused. The trial Court has also not properly appreciated the evidences, in the manner in which we have dealt with in this judgment. As such, the conviction, as well as the consequential sentence imposed by the trial Court, cannot be sustained.

36. For all the foregoing reasons, the Criminal Appeal stands allowed and the conviction and sentence imposed upon the appellant/accused in S.C.No.70/2008, dated 13.10.2017, on the file of the learned Principal Sessions Judge, Puducherry, is set aside. Consequently, the appellant is



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acquitted of all the charges and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded and the bail bonds, if any, executed shall stand discharged.

[M.S.R.,J.] [S.M.,J.]
16.07.2024

Index: Yes

Neutral Citation: Yes

Speaking order

hvk

Note: Issue order copy on 18.07.2024



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- 1.The Superintendent of Prisons,
Central Prison, Kalapet,
Pondicherry.
- 2.The Inspector of Police,
Orleanpet Police Station,
Puducherry.
- 3.The Public Prosecutor,
Puducherry,
High Court of Madras



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

hvk

Pre-delivery judgment made in
Crl.A.No.90 of 2019

16.07.2024