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Crl.A.Nos.285 & 388 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.285 & 388 of 2018

1. Nandakumar ... Appellant in Crl.A.No.285 of 2018
/Accused No.1

2. K.Periyasamy ... Appellant in Crl.A.No.388 of 2018
/Accused No.2

v.

State by the Inspector of Police
Poolampatty Police Station,
Edappadi Taluk,
Salem District.
(Crime No.246 of 2015) ... Respondent/Complainant
in both the Appeals

Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellants and sentence in S.C. No.264 of 2016 dated 16.04.2018, on the file of the learned III Additional District and Sessions Judge, Salem and set aside the conviction



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and sentence imposed in judgment dated 16.04.2018 and acquit the appellants.

For Appellant

in Crl.A.No.285/2018 : Mr.T.Sai Krishnan

in Crl.A.No.388/2018 : Mr.G.Karupasamy Pandian

Mr.C.Palanisamy

For Respondent

: Mr.Babu Muthu Meeran

in both the Appeals

Additional Public Prosecutor

COMMON JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

These Criminal Appeals have been filed by the accused 1 and 2, challenging the conviction and sentence imposed upon them vide judgment dated 16.04.2018 in S.C.No.264 of 2016 on the file of the learned III Additional District and Sessions Judge, Salem.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3 (i). It is the case of the prosecution that A1 and A2 are close friends;



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that both belong to the same Taluk; that A1 was an agriculturist and also driving an omni car for hire; that A2 is a two-wheeler mechanic and that both of them were addicted to drinks; that A1 used to visit his sister's house viz., Nithya, which is situated near the house of the deceased; that on coming to know that the deceased was staying alone in her house A1 decided to commit robbery; that on 22.10.2015, A1 took the bike belonging to his friend bearing Regn.No.TN52 D 8795, parked the vehicle in front of deceased's house and was lying down in the veranda; that the deceased (who was partly blind) came out of the house in the early morning and mistook A1 for her grandson-Sarath Kumar and asked A1 to go inside the house; that A1 used the opportunity and entered the house and caused the death of the deceased by strangulating her; and that thereafter, taking the gold chain weighing 28 grams, he took the motor bike to the shop of A2, who changed the red colour seat cover to black colour and removed the sticker in the bike.

(ii) It is the further case of the prosecution that PW1, who is the nephew of the deceased went to the house of the deceased at about 9.00



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p.m., on 23.10.2015 and since the door was locked from inside, he went to the backside of the house and through the window, he saw the deceased lying in a rope cot; that thereafter, he along with others broke open the front door and found that there was blood in her nose and floor; that though he initially suspected that she could have died because of blood pressure, while lifting her body he realised that her gold chain was missing; that suspecting foul play, PW1 lodged a complaint [Ex.P1] on 24.10.2015 at 12.15am to PW20, who in turn registered an FIR in Cr.No.246 of 2015 [Ex.P19] under Section 174 Cr.P.C.

(iii) In the complaint, PW1 stated that he came to know from the neighbours that PW6-Sarathkumar, the grandson of the deceased had come to the house of the deceased. However, when he inquired PW6, the grandson of the deceased, he learnt that PW6 did not visit the house of the deceased.

(iv) PW22, the investigating officer, took up the investigation, went to the scene of the occurrence at 12.45am, prepared the Observation



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Mahazwer [Ex.P2] and Rough Sketch [Ex.P20]; he conducted an inquest on the body of the deceased, and prepared the inquest report [Ex.P21]. At 5.00a.m., PW22 recovered the bloodstained rope [M.O.3], the bloodstained earth [M.O.4], and the earth that was not bloodstained [M.O.5]. A broken piece of padlock [M.O.6] and a crow-bar [M.O.7] used to break open the door were also recovered. He examined the witnesses PW1, PW2, PW4 and PW5 and other witnesses. Thereafter, he sent the body for a postmortem through PW19-Head Constable.

(v) On 07.11.2015, PW22 examined PW10, the postmortem Doctor, and based on his opinion, he altered the offence in the FIR from Section 174 Cr.P.C., to Sections 419, 449, 302, and 392 of the IPC and prepared the Alteration Report [Ex.P22].

(vi) During the course of the investigation, on 03.01.2016, A1 is said to have appeared before PW13, the Village Administrative Officer, Poolampatty and given a confession. PW13 produced A1 along with the special report before the investigating officer at 9.30 a.m., and on his



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confession, A2 was arrested at 11.45am on the same day. On the confession of A2, PW22 along with PW13 went to the shop of PW16 where A2 had allegedly pledged the gold chain taken from the body of the deceased by A1. PW22 also seized the gold chain [M.O.1] from PW16-Kannan under the Seizure Mahazar[Ex.P13] and seized the document [Ex.P14] evidencing the pledging of gold jewels and on A1's confession, seized the bike [M.O.2] from the house of PW14. After examination of all other witnesses, filed the final report against the accused for offences under Sections 419, 449, 302, 392, 201 and 414 r/w 34 of the IPC, before the learned Judicial Magistrate No.1, Sangagiri.

(vii) On the appearance of the appellants/accused, 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.264 of 2016 and was made over to the learned III Additional District and Sessions Judge, Salem, for trial. The trial Court framed charges under Sections 419, 449, 302, 392, 201, and 414 of the IPC against A1 and under Section 201 and 414 of the IPC, as against A2, and when questioned, the appellants pleaded 'not guilty'.



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(viii) To prove the case, the prosecution examined 22 witnesses as P.W.1 to P.W.22, marked 31 exhibits as Exs.P1 to P31, and marked 16 Material Objects as M.O.1 to M.O.16. When the appellants were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The appellants/accused neither examined any witnesses, nor marked any documents.

(ix) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and convicted and sentenced the accused as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1	419 IPC	To undergo RI for three years.
	449 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo RI for six months.
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo RI for six months.
	392 IPC	To undergo RI for 10 years and to pay a fine of Rs.1,000/- in default to undergo RI for six months.
	201 IPC	To undergo RI for 7 years and to pay a fine of



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<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A2		Rs.1,000/- in default to undergo RI for three months.
	414 IPC	To pay a fine of Rs.1,000/- in default to undergo SI for three months.
	201 IPC	To undergo RI for 7 years and to pay a fine of Rs.1,000/- in default to undergo RI for three months.
	414 IPC	To pay a fine of Rs.1,000/- in default to undergo SI for three months.
Sentences are ordered to run concurrently.		

Hence, the accused/appellants have preferred these appeals challenging the said conviction and sentence.

4. Heard Mr.T.Sai Krishnan, learned counsel appearing for the appellant in Crl.A.No.285 of 2018/A1; Mr.G.Karupasamy Pandian, learned counsel appearing for the appellant in Crl.A.No.388 of 2018/A2; and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the appellants submitted that it is a case of no evidence, the prosecution has not proved the alleged recovery, and there



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are no other circumstances against the accused. The prosecution rests on the extra judicial confession said to have been made by A1 [Ex.P12] which cannot be relied upon since PW22 admitted that he had called A1 for an enquiry much before the alleged extra judicial confession was recorded on 03.10.2016.

6. The learned Additional Public Prosecutor *per contra* submitted the recovery of the gold chain, which was identified by the relatives of the deceased, which corroborates the extra judicial confession given by A1. Therefore, the extra judicial confession, which is truthful and voluntary can be relied upon to hold the accused guilty of the offence.

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

8 (i) PW1 is the complainant and suspecting foul play in the death of his aunt; he had lodged a complaint; PW2 is the daughter of the deceased,



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who went to the scene of the occurrence and had deposed that they had identified the chain at the police station; PW3 is the cousin of the deceased, who had stated that on 23.10.2015 at about 7 a.m., when she found a bike outside the house of the deceased, she asked the deceased as to who had come to the house and that the deceased stated that it was her grandson- Sarath Kumar [PW6].

(ii) PW4 is the sister of the deceased, who went to the scene of occurrence on coming to know that her sister was dead; PW5 is another daughter of the deceased, who identified the chain of the deceased at the police station; PW6 is the grandson of the deceased, who, according to the prosecution was impersonated by A1, and he had deposed that he never went to see his grandmother, and he came to know that some other person went to the house, stating that it was him.

(iii) PW7 is another grandson of the deceased who saw a person sleeping with a bed sheet covered over his face, and since his grandmother



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told him not to disturb him, he had not woken him up though he had a doubt that it could not be Sarath Kumar, who was sleeping. PW8, is another neighbour who came to know from the deceased that her grandson-PW6 had come to her house. PW9 is a witness for observation mahazar and is related to the deceased.

(iv) PW10 is the postmortem doctor, who had opined that the deceased would have died due to strangulation; PW11 is the Assistant Director working in the Forensic Science Laboratory, who had issued Ex.P7-Toxicology Report, in which he stated that no poison was detected in the internal organs of the deceased; PW12 is another Assistant Director of the Forensic Science Laboratory, who issued Ex.P10 report stating that blood was detected in the white rope and in the earth.

(v) PW13 is the Village Administrative Officer, Poolampatty, before whom A1 is said to have given the extra-judicial confession at 8.00 a.m., on 03.01.2016; PW14 is the owner of the bike said to have been used by A1 and also speaks to the effect that the seat cover, which was originally red in



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colour was changed to black by A2. He also states that his employer, one Manoj Kumar [PW17], took the bike from him and he came to know through PW17 that one Nandakumar [A1] took the bike from the said Manoj Kumar; PW15 is the one who identified the footwear of A1; PW16, according to the prosecution, runs a provisional store and also a Pawn Broker shop. He had stated that A2 had pledged the jewel on 23.10.2015 at about 5.00 p.m., and took the cash of Rs.42,000/-, stating that his uncle was not well.

(vi) PW17 is the employer of PW14, who reiterated PW14's version that the bike was taken by A1 fromplead him; PW18 is working in the Public Works Department and has stated about the request made by the investigating officer to help him find out the key said to have been thrown in Mettur Channel [கால்வாய் சூழல்] and that he had told the investigating officer that it is not possible to take the key.

(vii) PW19 is the Head Constable; PW20 is the Sub Inspector of Police, who registered the FIR under Section 174 Cr.P.C.; PW21 assisted



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the investigating officer; and PW22 is the investigating officer.

9.(i) It is the case of the prosecution that A1 took the bike from PW17, which belongs to PW14, and was lying in the veranda of the house of the deceased; that the deceased thinking that A1 was her grandson-PW6, called him inside the house and made him take rest; and that A1 exploited the said situation and caused the death of the deceased and committed robbery.

(ii) There is no evidence to show that A1 took the bike to the house of the deceased. None of the neighbours have identified the bike. Therefore, the fact that A1 took the bike belonging to PW14 from PW17 is of no avail to the prosecution. It is also not the evidence of the neighbours that a bike with red seat cover was found near the house of the deceased. Therefore, changing the colour of the seat cover is also of no relevance and does not advance the prosecution case in any manner. PW7, another grandson of the deceased had identified M.O.2-bike, as the bike that was parked outside the house of the deceased on the fateful day. However, he had not given any



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description of the bike earlier. He was examined three years after the occurrence. Further, he was aged 15 when he was examined and at the time of occurrence, he was 12 years old. Considering all the above facts, it is highly unsafe to rely on his evidence alone to show that M.O.2-bike was parked outside the house of the deceased.

10 (i). A gold chain weighing 28 grams is said to have been recovered from the shop of PW16 on the confession given by A2. The said seizure is said to have been made on 03.01.2016 at about 13.30 hours, i.e., 1.30 p.m. Along with the chain, Ex.P14, said to be a document evidencing the pledge, was allegedly seized. The description of the chain reads as follows:

“சுமார் 28 கிராம் எடையுள்ள பழைய சாதா செயின்
(தங்கம்) ஒன்று”

(ii) PW4, the daughter of the deceased stated that she had handed over the picture of the chain to the investigating officer. However, we find that the said photograph has not been marked by the prosecution. PW1 further stated that the chain was the 'Godumai' chain; however, the seized



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gold chain had no such reference. PW1 had admitted that the police called him on 03.01.2016 and they went to the station and identified the chain at about 12.00 p.m., on 03.01.2016. The relevant portion reads as follows:

“3.1.16 அன்று காவல் நிலையத்திற்கு போனபோது பகல்
12 மணியிருக்கும்”

(iii) PW2 would say that she went to the police station at 4.00 p.m., and identified the chain. PW3 would state that he identified the chain at about 10.00 a.m. PW7 went to the police station, and saw the accused, and did not see the gold chain.

(iv) The case of the prosecution is that the chain was seized only at 13.30 hours (1.30 p.m.) on 03.01.2016 from the shop of PW16. There are discrepancies with regard to the time when the witnesses are called to the police station and the time of the seizure.

(v) Be that as it may. Ex.P14 evidencing the pledging of jewels by A2 with PW16 is not in a letter-head and does not appear to be a receipt. It is



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the case of the prosecution that Ex.P14 was found along with the jewel at the shop of PW16. Even in the said document, the description, viz., the nature and weight of the jewel pledged is not mentioned. PW16 would admit that he had no license to do Pawn Broking business. Ex.P14 the alleged receipt does not appear to be a receipt for evidencing the pledging of a jewel. Further, no such receipt was recovered from the accused. It is a matter of common sense that the receipt for pledging has to be retained by the person pledging the jewels to enable the redemption of the jewels later. PW16 has stated that he was not in the habit of giving the receipt to the person pledging the jewels. All these raises doubt with regard to the PW16's version about the pledging of the jewels, by A2.

11(i). The only other piece of evidence relied upon by the prosecution is the alleged extra judicial confession given by A1 [Ex.P12], to PW13. The extra judicial confession is said to have been made on 03.01.2016, nearly two months after the occurrence. The prosecution has not let in any evidence to show as to why the accused voluntarily appeared before PW13, who was a total stranger, to give an extra judicial confession. The other



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circumstance which would support the defence version that the extra judicial confession was not voluntary is the admission made by PW22 that even before the alleged extra judicial confession given by A1, he had called A1 for an enquiry. The relevant portion of his cross-examination reads as follows:

“3.1.16ம் தேதிக்கு முன்பு 1ம் எதிரியை காவலுக்கு
வரவழைத்து ஒரு முறை விசாரித்தேன் என்றால் சரி தான்”

(ii) The above would clearly show that the respondent, suspecting the involvement of A1 even before the alleged confession, had called A1 for an enquiry. From the above it can be seen that the influence of the investigating officer cannot be ruled out, and hence, the extra judicial confession cannot be said to be voluntary and truthful. Further, in the absence of any other corroboration, we cannot place any reliance on the extra-judicial confession alone in the facts of this case to convict the appellants.

12. Therefore, in the above mentioned circumstances, this Court is of the view that the circumstances relied upon by the prosecution have not been



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conclusively established, and in any case, they do not form a complete chain so as to rule out any other hypothesis, except pointing out the guilt of the appellants. Hence, it is highly unsafe to convict the appellants on the basis of such evidence.

13. For the aforesaid reasons, we are of the view that the judgment of conviction and sentence passed in S.C.No.264 of 2016, dated 16.04.2018 on the file of the learned III Additional District and Sessions Judge, Salem, is liable to be set aside.

14. In the result, both the Criminal Appeals are allowed, and the appellants/accused 1 and 2, are acquitted of all charges levelled against them. The conviction and sentence passed in S.C.No.264 of 2016, on the file of the learned III Additional District and Sessions Judge, Salem, *vide* judgment and order dated dated 16.04.2018, are set aside. The fine amount, if any, paid by the appellants shall be refunded. Bail bonds executed shall stand discharged.



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[M.S.R.J.] [S.M.J.]
29.01.2024

Index : yes
Neutral citation : yes
Speaking/Non-speaking order
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M.RAMESH, J.

AND

SUNDER MOHAN,J.

ars

To

1.The III Additional District & Sessions Judge,
Salem.

2.The Inspector of Police
Poolampatty Police Station,
Edappadi Taluk,
Salem District.

3.The Public Prosecutor,
High Court, Madras.

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