



CrL.A.No.176 of 2019

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

[Order of the Court was made by
SUNDER MOHAN, J.]

Today, this Criminal Appeal is listed at the request of the learned counsel for the appellant, under the caption 'For Being Mentioned', since the date of judgment of the trial Court and the name of the accused were wrongly mentioned in the Advance Order.

2. It is now stated that though the detailed order has been signed and uploaded in the website, original order is yet to be dispatched.

3. We perused the judgment of the trial Court and noticed that though in the cause title, the date of judgment is shown as '04.01.2019', at the last page of judgment, it is stated that it was pronounced on 06.02.2019.

4. In view of the above, Registry is directed to correct the date of judgment of the trial Court as '06.02.2019', instead of '04.01.2019' and issue a fresh order copy forthwith.

[M.S.R.J] [S.M.J]
06.02.2024

ars

Issue order copy immediately.



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2024

PRONOUNCED ON : 02.02.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Babu @ Gnanasekar

... Appellant/Accused

v.

State represented by
Inspector of Police
Vellore Taluk Police Station,
Vellore, Vellore District.

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.9 of 2017 dated 04.01.2019, on the file of the learned Additional Sessions Judge, Fast Track Court, Vellore, and set aside the conviction and sentence imposed in judgment dated 04.01.2019 and acquit the appellant.

For Appellant : Mr.A.Nagarajan
Mr.K.R.Ramesh Kumar
For Respondent : Mr.E.Raj Thilak



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Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal has been filed by the Accused, challenging the conviction and sentence imposed upon him vide judgment dated 04.01.2019 in S.C.No.9 of 2017 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Vellore.

2. For the sake of convenience, the accused is hereinafter referred to as 'appellant/accused'.

3(i) It is the case of the prosecution that the appellant/accused along with other juvenile accused entered into criminal conspiracy to cause the death of the deceased (Saravanan) in this case and commit robbery; that pursuant to the said conspiracy, on the information given by one of the juvenile accused 'Vijay' and with the help of the other juvenile accused, the appellant/accused trespassed into the house of the deceased and caused his death in the night intervening 29.05.2015 and 30.05.2015; that all the accused caused head injuries with a stone and an iron rod and robbed 10



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sovereigns of gold chain, 5 gold rings, two pairs of gold studs, nose rings, and cash of Rs.95,000/-.

(ii) It is the further case of the prosecution that PW1, who is the sister-in-law of the deceased and her mother-in-law (mother of the deceased) went out of the house to attend a function on 29.05.2015; that when they tried to call the deceased to pick them up, the phone was switched off; that therefore, PW1 informed PW3 to check as to what happened to the deceased; that PW3 found the deceased dead with head injuries and he also found a stone lying nearby; that PW1 thereafter, went to the house and found the deceased lying dead; that the front door of the house was broke-open and her mother-in-law's gold chain, 4 bangles and 10 finger rings, all weighing 15 sovereigns as well as the loan bond papers, were found missing from the steel box in the room; that PW1 lodged a complaint for the offences under Sections 302 and 380 of the IPC at 2.00 p.m., on 30.05.2015, which was registered by PW7, the Sub Inspector of Police. The complaint was marked as Ex.P1, and the printed copy of the FIR was marked as Ex.P10.



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(iii) PW10 took up the investigation and went to the scene of the occurrence at about 3.00p.m., on the same day, i.e., on 30.05.2015. He examined the witnesses and prepared the Observation Mahazar [Ex.P28] and Rough Sketch [Ex.P29]. He examined the witnesses, and conducted an inquest, and prepared the inquest report [Ex.P30]. Thereafter, he sent the body for a postmortem through PW6. The postmortem was conducted by Dr.A.Nagendra Kumar, Assistant Professor, Department of Forensic Medicine, at the Government Vellore Medical College, and the postmortem certificate was marked as Ex.P37 through PW10. However, the prosecution had not examined the postmortem doctor during the trial. In the postmortem certificate, the doctor had opined that the deceased died due to head injuries.

(iv) There was no progress in the investigation for nearly seven months after the occurrence. PW10 would state that a juvenile accused one Selvakumar, was close to the mother of the deceased and was acquainted with the house and family. Suspecting the involvement of the said Selvakumar, he monitored the movements of the said Selvakumar and found that he had a lot of money to spend. On 16.12.2015, at about 1.15p.m.,



when the accused and the juvenile accused were going in two two-wheelers, they were intercepted, and on the information of the appellant/accused, they seized the gold jewels pledged with one Muthoot Finance in his name and in the name of his mother, one Selvi. The seizure mahazar-Ex.P36 reveals the seizure of five gold rings weighing 11.800 gms; four studs weighing 8 gms; one nose stud weighing 1.800 gms; and a chain weighing 80.500 gms.

(v) Further, on the confession of the appellant/accused a two-wheeler bearing Regn.No.TN20 BS 4397 [M.O.13] and four receipts [M.O.12] evidencing the pledging of jewels were seized from the house of the appellant/accused under Ex.P35-Mahazar. The investigating officer had also seized a few bond papers, a suitcase, an iron rod, and a lock and key under a bridge on the confession of the appellant/accused, under Seizure Mahazar-Ex.P34. PW10, after completing a substantial portion of the investigation, handed over the investigation to PW11. PW11, after examining a few other witnesses, filed the final report against the appellant/accused and other juvenile accused for the offences under Sections 120 (b), 449, 302, 392 r/w 120(b), and 34/114 of the IPC before the learned Judicial Magistrate No.I,



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(vi) On the appearance of the appellant/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.9 of 2017 and was made over to the learned Additional District and Sessions Judge, Fast Track Court, Vellore, for trial. The trial Court framed charges against the appellant/accused, and when questioned, the appellant/accused pleaded 'not guilty'.

(vii) To prove the case, the prosecution examined 11 witnesses as P.W.1 to P.W.11 and marked 39 exhibits as Exs.P1 to P39, and marked 20 Material Objects as M.O.1 to M.O.20. When the appellant/accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused examined one witness as DW1 and marked two exhibits, viz., Ex.D1 and Ex.D2.

(viii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable



doubt and held the appellant/accused guilty of offence under Sections 449, 302, and 397 of the IPC. The appellant/accused was convicted and sentenced as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
302 IPC	To undergo life imprisonment and to pay a fine of Rs.3,000/-, in default to undergo RI for two years
397 IPC	To undergo RI for seven years.
449 IPC	To undergo life imprisonment and to pay a fine of Rs.2000/-, in default to undergo imprisonment for two years.
Sentences are ordered to run concurrently.	

Hence, the accused has preferred the appeal challenging the said conviction and sentence.

4. Heard, Mr.A.Nagarajan, learned counsel appearing for the appellant/accused, and Mr. E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

5 (i) Mr.Nagarajan, learned counsel for the appellant/accused submitted that apart from the recovery of jewels on the alleged confession of the appellant/accused, which is said to have been pledged with one



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Muthoot Finance, in which PW9 was working as a Manager, there is no other circumstance to connect the accused with the crime; that the said circumstance also has not been conclusively established; and that the evidence of the investigating officer would show that PW1 suspected the involvement of some other persons in the crime, as the appellant/accused had a number of enemies due to certain money transactions with certain persons belonging to Kathikanallur Village. The learned counsel further submitted that the circumstances have not been conclusively established, and in any event, they do not form a complete chain.

6. The learned Additional Public Prosecutor *per contra* submitted that the judgment of the trial Court is in accordance with the law and there is no reason to interfere with the finding of the trial Court. Therefore, he prayed for dismissal of the appeal.

7. We have carefully considered the rival submissions and have perused all the relevant records.



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8. PW1 is the daughter of the deceased first informant; PW2 is a Seizure Mahazar witness; PW3 is the neighbour / milk man, who first saw the deceased after PW1 called him to check about the deceased; PW4 is the Village Administrative Officer, who witnessed the recovery of jewels on the confession made by the appellant/accused; PW5 speaks about a two-wheeler purchased by appellant/accused for Rs.17,500/- on 11.06.2015; PW6 is the Grade-I Constable who handed over the corpse at the hospital; PW7 is the Sub-Inspector of Police, who registered the FIR; PW8, is the Assistant Director of Forensic Science Laboratory; PW9 is the Manager of Muthoot Finance Limited, from whom jewels were recovered on the confession of the appellant/accused; PW10 is the investigating officer, who conducted substantial portion of investigation, as stated earlier; and PW11 is the investigating officer, who filed the final report.

9. Though, the postmortem Doctor was not examined by the prosecution, the postmortem report-Ex.P37 was marked by the investigating officer. As per the postmortem report, the deceased died due to the head injuries sustained by him. The nature of the injuries found in Ex.P37-



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postmortem report would show that the deceased suffered homicidal violence. The prosecution had established that the deceased died due to homicidal violence. There is no dispute with regard to the said fact.

10. Admittedly, there is no evidence let in by the prosecution to establish the presence of either the appellant/accused or other juvenile accused near the house of the deceased at or about the time of the occurrence. It is the prosecution case that the occurrence would have taken place on 29.05.2015 at night hours. After the registration of the FIR on 30.05.2015, there was no progress in the investigation until the accused were arrested on 16.12.2015.

11. PW10, had stated that they had suspected the involvement of one juvenile accused by name Selvakumar, who was suddenly found with abundant cash. After closely monitoring his movements, when he was found in the company of the appellant/accused, his brother, and others, all the accused were arrested, and on the confession of the appellant/accused, they recovered gold jewels that were pledged with one Muthoot Finance



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where PW9 was working.

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12. The recovery of jewels at the instance of the appellant/accused can be an important circumstance in a case of murder for gain, which is based on circumstantial evidence. However, we find that there are no other circumstances to connect the appellant/accused with the alleged offence. Be that as it may. Even as regards the recovery of jewels at the instance of the appellant/accused, we find that the jewels were pledged by one Selvi, who according to the prosecution is the mother of the appellant/accused. A portion of the jewels were pledged by the appellant/accused himself. As per the evidence of PW9, the jewels were pledged on three different dates, i.e., on 19.09.2015, 21.09.2015 and 23.10.2015. In the complaint, PW1 stated that the jewels belonging to her mother-in-law, viz., Amsa were taken from an iron safe in the house. In the complaint, she states that four bangles, 10 rings, a three-line chain [முப்பட்டைச் செயின்] and certain bond papers evidencing loan transactions, were taken away from her house. Strangely, the said Amsa (mother-in-law of PW1 and mother of the deceased) was not examined by the prosecution. It is also the case of the prosecution that on



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the confession of the appellant/accused, a few bond papers, a suitcase, a lock and key, and an iron rod were seized under a bridge, under seizure mahazar-Ex.P34 and those objects were marked as M.O.8 to M.O.11. Further, we find that the seizure of iron rod and bond papers under a bridge, several months after the occurrence, appears to be highly improbable, since it is the case of the prosecution that the bond papers were intact after seven months.

13. The occurrence is said to have taken place at the house of the mother of the deceased. Further, none of the material objects viz., the jewels [M.O.17 to M.O.20 and M.O.9], the bond papers seized on the confession of the appellant/accused were shown to PW1 during her deposition in Court for identification. Since PW1 has not identified the jewels, one cannot infer that the material objects seized at the instance of the appellant/accused belonged to the mother of the deceased. As stated earlier, the mother of the deceased was not examined.

14. There is no other evidence let in by the prosecution to show that



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the jewels seized belonged to the mother of the deceased/mother-in-law of PW1. That apart in the complaint, PW1 had not referred to any missing cash. However, during her deposition in Court, she would add that cash of Rs.95,000/- to Rs.1,00,000/- was also found missing in the house. However, there is no recovery of any cash from the appellant/accused.

15. Further, we also find that a substantial portion of the jewels were pledged by one Selvi, the mother of the appellant/accused and the date of pledging of jewels is not proximate to the date of occurrence, and the jewels recovered do not match exactly with the description of the jewels given by PW1 in the complaint. The evidence at best leads to a suspicion. It is a well-settled law that suspicion, however grave, cannot take the place of proof.

16. Therefore, the only circumstance that is sought to be established by the prosecution is the recovery of the gold jewels and certain bond papers, which has not been proved to be taken from the house of the mother of the deceased. In any case, the circumstances do not form a complete



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chain so as to rule out any other hypothesis, except pointing out the guilt of the appellant/accused. In such circumstances, we are of the view that the appellant/accused cannot be convicted on the basis of the evidence let in by the prosecution and the judgment of conviction and sentence, are liable to be set aside.

17. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant/accused in S.C. No.9 of 2017 dated 04.01.2019, on the file of the learned Additional District and Sessions Judge, Fast Track Court, Vellore, are set aside. The appellant/accused is 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. Bail bonds, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
02.02.2024

Index : yes
Neutral citation : yes



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1. The Additional District and Sessions Judge,
Fast Track Court, Vellore.
2. The Inspector of Police,
Vellore Taluk Police Station,
Vellore, Vellore District.
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court, Madras



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Pre-delivery Judgment in
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02.02.2024