



Crl.A.No.525 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.07.2024

PRONOUNCED ON : 02.08.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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1.Arumugam

2.Sivakumar

... Appellants/ A1 & A2

v.

State represented by
Inspector of Police,
Kottapatti Police Station,
Dharmapuri District.
(Crime No.217 of 2014)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellants/accused and sentence in S.C.No.107 of 2016 dated 09.07.2019, on the file of the learned Additional Sessions Judge, Dharmapuri, and set aside the conviction and sentence imposed in judgment dated 09.07.2019 and acquit the appellant/sole accused.

For Appellants : Mr.V.Parthiban
for Mr.Ilaya Perumal (for A1)

Mr.V.Parthiban



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for Mr.V.Raja Mohan (for A2)

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal has been filed by Accused Nos.1 and 2 challenging the conviction and sentence imposed upon them, vide judgment dated 09.07.2019 in S.C.No.107 of 2016, on the file of the learned Additional Sessions Judge, Dharmapuri.

2.(i) It is the case of the prosecution that the accused/appellants and a juvenile accused are known to each other; that the accused conspired to commit robbery in the house of the deceased after murdering him; that pursuant to the said conspiracy, on 05.11.2014 at about 7.00 p.m., the accused took the juvenile accused from Aroor Bus Stand and got down at T-Andiyur Bus Stand and went to the house of the deceased at about 11.00 p.m. on the same day; that they trespassed into the house; A1 sat on the leg of the deceased and smothered him with the pillow; that the juvenile



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accused closed the face of PW2-wife of the deceased with a bed sheet, and he took the earring of PW2; and that thereafter, he attacked PW2 with the safety pin and also took away the cell phones of the deceased and PW2, besides a torch light in the house.

(ii) PW1, son of the deceased, who was residing at Salem, on coming to know that his father was done to death by the robbers and had taken a gold earring of his mother, came to the house at about 2.45 a.m., on 06.11.2014 and took his mother to the hospital and thereafter, lodged a complaint [Ex.P1] at about 7.00 a.m., on 06.11.2014. PW13 the Sub Inspector of Police registered the FIR [Ex.P.10] in Cr.No.217 of 2014 for the offences under Sections 302, 396 and 307 of the IPC.

(iii) PW18, the investigating officer, took up the investigation, went to the scene of the occurrence on 06.11.2014 at 8.00 a.m., and prepared the Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P25] . He also sought the assistance of the photographer and the sniffer dog squad. He took the assistance of the fingerprint expert and found four chance prints in the door



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of the house and in the cup board [almirah]. He seized the pillow (M.O.5) under Seizure Mahazar [Ex.P3]. He conducted an inquest over the dead body of the deceased between 9.00 a.m. and 12.00 noon, in



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the presence of the panchayathars and prepared the inquest report [Ex.P19].

Thereafter, he sent the body of the deceased for postmortem, which was conducted by PW14, who had issued Ex.P12-Postmortem certificate. He took steps to compare the chance fingerprints taken at the scene of the occurrence with the fingerprints of the suspects available at the police station. However, the fingerprints did not tally with that of any of the suspects.

(iv) On 12.11.2014, PW18 obtained the wound certificate of PW2 and examined the doctor, who treated her. On 14.11.2014, on the confession given by PW7, he arrested A1 and on his confession, he learnt that A2 and the juvenile accused were also involved in the occurrence. On the confession of A1, he seized a gold earring with a white stone weighing 6 grams, from A1 at Keezh Chengapadu Bus Stand. Thereafter, he sent the fingerprints taken at the time of arrest to the fingerprint expert for comparison. After recording the statements of other witnesses and the fingerprint expert, he altered the offence as under Sections 120(B), 448,



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392, 392 r/w 397, 302 and 307 r/w 109 of the IPC. The alteration report is marked as Ex.P26. On completion of investigation, he filed the final report against the accused before the learned Judicial Magistrate, Aroor

(v) On the appearance of the appellants, the provisions of Section 207 Cr.P.C., were complied with, and was committed to the Court of Session in S.C.No.107 of 2016 and made over to the learned Additional Sessions Judge, Dharmapuri, for trial. The trial Court framed charges for the offences under Sections 120(B) r/w 392, 448, 302 and 392 of the IPC against the appellants, and when questioned, the appellants pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 18 witnesses as P.W.1 to P.W.18, marked 27 exhibits as Exs.P1 to Ex.P27 and marked 9 material objects as M.O.1 to M.O.9. When the appellants were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The appellants neither examined any witness nor marked any document on their side.



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(vii) On appreciation of oral and documentary evidence, the trial

Court found that the prosecution had established its case beyond reasonable doubt and held the appellants guilty of the offences under Section 120(B) r/w 392, 302, 448 and 392 of the IPC. The appellants were sentenced as follows:

<i>Accused No.</i>	<i>Offence under</i>	<i>Sentence imposed</i>
A1 and A2	120(B) r/w 392 IPC	Each of them to undergo 2 years RI and to pay a fine of Rs.1,000/-, in default to undergo RI for three months.
	302 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo RI for one year.
	448 IPC	Each of them to undergo 1 year RI and to pay a fine of Rs.500/-, in default to undergo SI for three months.
	392 IPC	Each of them to undergo 10 years RI and to pay a fine of Rs.2,000/-, in default to undergo SI for 6 months.
The sentences were ordered to run concurrently.		

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

3. Heard, Mr.V.Parthiban, learned counsel appearing for the appellants, and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.



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4. The learned counsel for the appellants submitted that though PW2 had identified A1 in the Court, her deposition cannot be relied upon; that no Test Identification Parade was conducted and PW2 had not identified the jewels during the investigation; that PW1 the complainant had not given the identification marks of the jewels and hence, the identification of the jewels by PW2 in Court, cannot be relied upon; that the evidence of the fingerprint expert, is of no use to the prosecution, as the investigating officer admitted that the records to show that the specimen fingerprint were sent to the fingerprint expert was not available in his file; that the investigating officer had admitted that he was unable to say as to when the specimen fingerprints were sent to the expert; that the arrest and recovery also cannot be believed, as even according to the prosecution, A1 was available for interrogation throughout. He therefore, prayed for acquittal of the appellants.

5. The learned Additional Public Prosecutor *per contra* submitted that the evidence of PW2 is cogent and convincing, her evidence is natural and there is no exaggeration in her version; that therefore, the absence of Test



Identification Parade by itself would not be fatal to the prosecution case; that the identification of jewels by PW2 and the recovery made on the confession of A1, establishes the prosecution case beyond reasonable doubt; and that the chance fingerprints lifted at the occurrence tallied with the fingerprints of A1 and A2 as per the reports [Ex.P16 to Ex.P18] of the officer [PW17] belonging to the District Fingerprint Bureau, District Police office, Dharmapuri. Hence, he prayed for dismissal of the appeal.

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

7. (i) As stated earlier, the prosecution examined 18 witnesses. PW1 is the son of the deceased, the *de facto* complainant and is a hearsay witness. PW2 is the injured eyewitness and the wife of the deceased, whose earring was stolen by the appellants; PW3 is the brother of PW1 and corroborated his version; PW4 is the relative of PW2 and a hearsay witness; PW5 and PW6 are the relatives of PW2 and witnesses in the inquest conduct by the Investigating officer; PW7 is another relative of PW2 and a



hearsay witness; PW8 is the witness to the observation Mahazar and was related to the deceased; PW9 is the Village Administrative Officer, who was a witness to the confession and recovery from A1; PW10 is the photographer; PW11 and PW12 are Constables who assisted the investigating officer; PW13 is the Sub Inspector of Police, who registered the FIR; PW14 is the Doctor, who conducted postmortem. PW15 is the constable in the Sniffer Dog Squad and issued the report [Ex.P13]; PW16 is the Doctor, who treated PW2 and made entries in the Accident Register [Ex.P14]; PW17 is the officer in the Single Digit Fingerprint Bureau of Dharmapuri, who had compared the chance fingerprints and the specimen fingerprints said to have been taken from the appellants; and PW18 is the Investigating Officer.

(ii) The prosecution had examined the doctor [PW14], who had conducted postmortem and in his report, Ex.P12, he had opined that the deceased died due to asphyxia. The postmortem report [Ex.P12] along with the other evidence of PW2, reveals that the deceased suffered homicidal death.



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8. However, as regards the involvement of the accused, it is seen that the prosecution case primarily rests on the evidence of PW2, the recovery of jewel-earring on A1's confession and on the reports of the fingerprint officer [Ex.P16 to Ex.P18].

9. (i) In the complaint [Ex.P1], it is seen that PW1 had stated that a gold earring weighing 6 grams was taken from PW2. The description of the earring was not stated in the complaint. However, PW2 had identified the earring [M.O.1] shown to her during her deposition. She had also identified the mobile phones [M.O.2 and M.O.3] seized from the juvenile accused. Further, she had identified A1 and stated that he had smothered the deceased with the pillow and the other accused-A2, as the person who caught hold of the hands and legs of the deceased. However, we find that no Test Identification Parade was conducted. Admittedly, the accused/appellants were not known to PW2.

(ii) When a specific question was put by the learned trial Judge to the



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investigating officer as to why no Test Identification Parade was conducted, the investigating officer stated that he did not conduct the Test Identification Parade since PW2 had seen all the accused when he took the accused for interrogation to the house of the deceased. The relevant portion reads as follows:

“நான் இவ்வழக்கில் அடையாள அணிவகுப்பு ஏன் நடத்தவில்லை என்று கேட்டால் ஆஜர் எதிரிகள் மற்றும் இளவரை கைது செய்து அவர்கள் கூறியவாறு சம்பவ இடமான சென்னியப்பன் வீட்டிற்கு அழைத்து வரும்போது அங்கு எதிர் பாராத விதமாக குப்பம்மாள் இருந்தார் அவர் மருத்துவமனையில் இருப்பார் என நான் நினைத்து அங்கு போன நேரத்தில் குப்பம்மாள் எதிரிகளை பார்த்த காரணத்தினால் அடையாள அணிவகுப்பு நடத்தும் நடவடிக்கைகளை நான் மேற்கொள்ளவில்லை.”

This is hardly any explanation for not conducting the Test Identification Parade. The answer only makes the case of the prosecution worse. If PW2 had already seen the accused at her house during investigation, her identification in Court also becomes unreliable.

10. (i) The next evidence relied upon by the prosecution is the arrest and recovery of jewels on the confession of A1. PW9 is a VAO and a witness to the arrest and confession. There is nothing on record to indicate



as to how the investigating officer came to the conclusion that the appellants were involved in the occurrence. PW7 had informed the police that A1 alone did not attend the funeral of the deceased and therefore, they had suspected the involvement of A1. PW7 had also stated that when the police enquired Arumugam-A1 as to whether any outsider had visited the village, on the fateful night, he replied in the negative and thereafter, A1 went missing. In our view, this would hardly be of any circumstance to suspect the involvement of A1.

(ii) Be that as it may, it is seen from the evidence of PW7 that A1 was available for interrogation by the police. PW7 would state that after the arrest, the Inspector had asked the accused something and A1 handed over the earring. The Mahazar evidencing seizure of the earring i.e., Ex.P5, shows that an earring with white stone weighing 6 grams, was seized behind Keezh Chengapadu Bus Stand. No steps were taken by the investigating officer after the seizure to confirm from PW2, as to whether it belonged to her.



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(iii) In some cases, relating to robbery or murder for gain, the victim/relative would be able to give the distinct identifying features of the object, which is the subject matter of the offence, even while lodging the complaint. For instance, the victim would be able to give the details confirming the identity of a jewel or article or the exact amount of cash stolen. In such cases, it would be easy for the investigating officer to compare the jewels or articles seized with the description given by the victim. However, very often the victims would not be able to give the specific details confirming the identity of the jewels or articles concerned. In such cases, the investigating officer, on recovery of the jewels or articles, has to confirm if the articles or jewels recovered, belonged to the victim. If the jewels/articles are shown to the victim at the police station, there is no guarantee that the victim is telling the truth.

(iv) In the case of ***Ramkishan Mithanlal Sharma Vs. State of Bombay*** reported in ***(1954) 2 SCC 516***, the identification of a property by an identifier to a Police Officer during the course of investigation, was held to be inadmissible in evidence, since such identification would attract



Section 162 Cr.P.C. The relevant portion of the judgment reads as follows:-

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



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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)

Following ***Ramkishan Mithanlal Sharma's case (supra)***, we had also, in the case of ***Kaleel Rahman @ Rahman @ Ragu Vs. Inspector of Police, Orleanpet Police Station*** passed in ***CrL.A.No.90 of 2019, dated 16.07.2024***, had found the identification of certain gold jeweleries made before the Investigating Officer, as impermissible in law.

(v) When identification of jewels to a Police Officer and not before a Court would be impermissible, the best way to ascertain whether the jewel or articles seized belonged to the victim is to conduct a Test Identification Parade as it is done for the identification of the accused. The Hon'ble Supreme Court has held in several cases that the investigating officer has to hold a Test Identification Parade in respect of stolen jewels or articles,



especially, when a specific description of the jewel or article, is not mentioned in the complaint.

(a) In ***Pannayar v. State of Tamil Nadu***, reported in (2009) 9 SCC 152, the Hon'ble Supreme Court had held as follows:

“27. This takes us again to the apathy on the part of the Investigating Officer in not getting the ornaments identified by holding a Test Identification Parade. We do not know why that was not done and why such a weak type of evidence (identification for the first time in the Court) was introduced.”

(b) In ***Venkatesh alias Chandra and Another v. State of Karnataka***, reported in 2022 SCC OnLine SC 765, the Hon'ble Supreme Court had held as follows:

“34. The crucial aspect is that even after the recovery of the ornaments, no Test Identification Parade was arranged by the Investigating Machinery. The ornaments worn by the deceased were normal ornaments which a lady would wear. Out of three witnesses examined by the Prosecution, the mother and the sister of the deceased did not support the case of the prosecution on identification of the ornaments. The only person who supported the case was the husband of the deceased who was not subjected to any Test Identification Parade.

35. The missing links in this circumstance are quite crucial and important. We, therefore, do not hold this circumstance to have been fully



established and the connection of the appellants with the missing ornaments cannot be said to have been established.”

(c) The Hon'ble Supreme Court in ***Sonu vs. State of Madhya Pradesh***

reported in (2022) 13 SCC 705 had held as follows:

29. In Ashish Jain v. Makrand Singh [Ashish Jain v. Makrand Singh, (2019) 3 SCC 770 : (2019) 2 SCC (Cri) 256], it is held as follows : (SCC p. 782, para 28)

“28. We find substance in the argument of the learned Amicus Curiae that this identification was not done in accordance with due procedure. It is evident from the testimony of several of the examined pledgors, such as PWs 15, 16 and 28, that the identification procedure was conducted without mixing the recovered jewellery with similar or identical ornaments.”

30. In this case also in regard to the mobile phone. only the two mobiles were kept for identification and it was purportedly identified as noticed by PW 9 besides PW 8. In the identification conducted by PW 13, it has come out that two mobile phones were not mixed with any other mobile phones

34. In Baiju v. State of M.P. [Baiju v. State of M.P., (1978) 1 SCC 588 : 1978 SCC (Cri) 142], the Court held : (SCC p. 595, para 14)

“14. ... The question whether a presumption should be drawn under Illustration (a) of Section 114 of the Evidence Act is a matter which depends on the evidence and the circumstances of each case. Thus the nature of the stolen



article, the manner of its acquisition by the owner, the nature of the evidence about its identification, the manner in which it was dealt with by the appellant, the place and the circumstances of its recovery, the length of the intervening period, the ability or otherwise of the appellant to explain his possession, are factors which have to be taken into consideration in arriving at a decision.”

That was a case where the Court found that the prosecution had proved the case. [emphasis supplied]

(d) Similarly, the Hon'ble Supreme Court in ***Ashish Jain vs Makrand Singh*** reported in (2019) 3 SCC 770 had held as follows:

“18.The Supreme Court Legal Services Committee was directed by us to engage a counsel for the respondent-accused since none had appeared for them. An Amicus Curiae was appointed to assist us in relation to the arguments for the respondents. He supported the majority view taken by the High Court in acquitting the accused persons, in entirety. He argued that there are discrepancies in the evidence relating to the arrests made and the alleged recoveries made by the police at the instance of the accused. The learned Amicus also stated that out of the recovery witnesses, who are all relatives of the deceased, only PW 26 has been examined. The non-examination of other witnesses, especially one Bahadur Yadav (the only independent witness), a servant of Premchand, who had allegedly assisted the police in the identification of the recovered ornaments by the mortgagees, was said to be crucial for the prosecution case. He further argued that no proper procedure was followed for the identification of the ornaments by the



mortgagees, and the police had taken active interest in the identification of the ornaments, which was suspicious. Lastly, he submitted that the last seen circumstance was not proved.

...

“28. We find substance in the argument of the learned Amicus Curiae that this identification was not done in accordance with due procedure. It is evident from the testimony of several of the examined pledgors, such as PWs 15, 16 and 28, that the identification procedure was conducted without mixing the recovered jewellery with similar or identical ornaments. Additionally, there is nothing on record to show the identity of the pledgors and to prove that the identified ornaments were pledged by them to the deceased Premchand, except for the account books maintained by the deceased Premchand for his business, but these cannot be relied upon. This is because these account books were seized by the police from the possession of Shailendra Kumar Jain, PW 11, who is the son-in-law of the deceased. Incidentally, he also runs a similar money-lending business as a pawn broker in another town. No valid reason is accredited to the recovery of deceased Premchand's alleged account books from the possession of his son-in-law. Moreover, these account books were returned to him without any prayer for the same and without following any procedure. Later, it was found that there were additional entries made in the account book after the date of the incident. Moreover, none of the witnesses have spoken about the particular entry relating to them in the account books. No signature of any witness is



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identified and marked in the account books. In other words, none of the witnesses have deposed about any relevant entry found in the account books with reference to their respective gold/silver articles.” [emphasis supplied]

(v) Rule 35 of Criminal Rules of Practice and Circular of order, 1990 framed by the High Court of Andhra Pradesh reads as follows:

35. Identification of property:

(1) Identification parades of properties shall be held in the Court the Magistrate where the properties are lodged;

(2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or similar objects.

(3). Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leaving shall not allowed to communicate with the witness not yet called.

(vi) Rule 9 of the Criminal Rules of Practice, 2019, framed by this Court deals with Test Identification Parade. However, the said Rule pertains



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to the identification of the accused. There is no Rule similar to the one framed by the Andhra Pradesh High Court, as regards the identification of the property. We are of the view that it is necessary for the investigating officer to conduct the Test Identification Parade in respect of jewels or articles that are alleged to have been stolen in accordance with the Judgments of the Hon'ble Supreme Court referred to above, when unique identifying features of the jewels or articles stolen are not mentioned by the victim in the complaint.

11. (i) The next circumstance is the evidence of PW17, the Deputy Superintendent of Police, who was working in the fingerprint Bureau. When we asked the learned Additional Public Prosecutor, as to why the chance fingerprints and the specimen finger prints said to have been taken from the appellants were not sent to a fingerprint expert, he brought to our notice a Standing Instructions-43/2013 issued by the Director General of Police on 26.08.2013, in which it is stated that in view of an inordinate delay in obtaining the required certificate from the fingerprint experts due to acute shortage of such experts, the officers may obtain a 'Certificate of



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Finger Print Examination' from the Deputy Superintendent of Police (FP), Single Digit Fingerprint Bureau of their respective District Commissionerates and that if the DSP (FP) feels that a case is important, he may forward the case to the Superintendent of Police (FP).

(ii) In the instant case, we find that the fingerprint expert had marked three exhibits viz., Ex.P16 to Ex.P18. In Ex.P16 the expert from the Fingerprint Bureau had stated that the chance fingerprints [K1 and K3] were not identical with the specimen fingerprints of the deceased and the witness PW2. In Ex.P17, he had stated that the chance fingerprint [K1] is identical with the left thumb impression of A2 and chance fingerprint [K3] is identical with the left ring finger of A1. In Ex.P17, he has given reasons for concluding that the chance finger prints K1 and K3, were identical with the fingerprints of the accused.

(iii) It is well settled that the evidence of a fingerprint expert is not a substantive evidence and it can only corroborate the other evidence on record. However, as to what value could be attached to a report given by a



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police officer, who claims to be trained in fingerprint comparison, even for the purpose of corroboration, would depend upon the facts and circumstances of each case.

(iv) In the instant case, even assuming that PW17 was competent to compare the chance fingerprints taken from the scene of the occurrence with the specimen fingerprints taken from the appellants, we find that there is lapse as could be seen from the evidence of PW17. It is the prosecution case that chance fingerprints found in the main door of the house and the bureau [almirah] tallied with the fingerprints of the appellants. The chance fingerprints were lifted as early as on 06.11.2014, a day after the occurrence. The appellants were arrested on 14.11.2014. It is the evidence of PW18 that he had handed over the specimen fingerprints of the accused, which were found in the Arrest register in the police station to PW17, for comparison with the chance fingerprints. However, in the cross examination, the investigating officer stated that he had sent the specimen fingerprints on 14.11.2014. He also admitted that there is no record to substantiate the said fact. He has further admitted that in the report of



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PW17 [Ex.P18] there is no reference to any communication sent by the investigating officer enclosing the specimen fingerprints. The relevant portion of PW18's evidence reads as follows:

“எதிரியிடம் பெறப்பட்ட கைரேகைகளை 14.11.2014ம் தேதி எங்களுடைய துறை நடவடிக்கையின் படி கவர் முலமாக அனுப்பி வைத்தேன் அதற்கான ஆவணங்கள் கோப்பில் இல்லை. கைரேகை நிபுணர் அறிக்கையில் 08.11.2014 மற்றும் 10.11.2014ம் தேதியிட்ட என் அலுவலக கடிதங்கள் என குறிப்பிடப்பட்டுள்ளது என்றால் அதில் அவ்வாறு தான் உள்ளது.”

(v) That apart, it can be seen that in the report of the Fingerprint Bureau, there is no reference to any letter on 14.11.2014. Therefore, in the absence of any definite evidence as to whether the specimen fingerprints of the accused were taken and sent to the Fingerprint Bureau, the comparison would not be relevant, and it would be difficult to place reliance on such a report.

12. In the light of the above evidence, we are of the view that PW2's evidence identifying the accused/appellants in Court, is valueless. The



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arrest and recovery are also highly doubtful. In any case, when the specific identification marks of the jewel, have not been stated by PW1 in his complaint, it is not known as to how the investigating officer, during the investigation, had concluded that the jewel recovered from A1 was one belonging to PW2. The Fingerprint Bureau's comparison is also of no use for the reasons stated above. Hence, we are of the view that we cannot hold the appellants guilty on the basis of such evidence. The prosecution has not proved its case beyond reasonable doubt and the appellants are therefore entitled to acquittal. The judgment of conviction and sentence passed by the trial Court, is hence liable to be set aside.

13. As a result, this Criminal Appeal is allowed, and the appellants are acquitted of all the charges. The conviction and sentence passed in S.C.No.107 of 2016, dated 09.07.2019 on the file of learned Additional Sessions Judge, Dharmapuri, are set aside. The fine amounts, if any, paid by the appellants shall be refunded. Bail bonds, if any, executed shall stand discharged.



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

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Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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To

1. The Additional Sessions Judge,
Dharmapuri.

2. The Inspector of Police,
Kottapatti Police Station,
Dharmapuri District.

3. The Superintendent,
Central Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras.

Pre-delivery judgment in
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