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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:13.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**CRL.A(MD) No.225 of 2022
and
CRL.M.P(MD)NO.3601 of 2022**

Babu ... Appellant/Accused

-VS-

The State , represented by
The Inspector of Police,
Aravakurichi Police Station,
Pudhukkottai,
(In Crime No.18 of 2016) ... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374 of Criminal Procedure Code praying this Court to call for the records and to set aside the sentence and conviction imposed in S.C.No.62 of 2016, dated 20.10.2016, on the file of Fast Track Mahila Court, Karur.

For Appellant : Mr.D.Ramesh Kumar
for M/s.S.Prabha



For Respondent : Mr.S.Ravi,
Addl.Public Prosecutor

JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

This Criminal Appeal is filed against the sentence and conviction imposed on the appellant in S.C.No.62 of 2016, dated 20.10.2016, on the file of Fast Track Mahila Court, Karur.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The appellant was found guilty of offence under Section 302 IPC, 449, 394 r/w 397 of IPC in S.C.No.62 of 2016, on the file of Mahila Court(FTC) Karur, is before this Court challenging the above said judgment of conviction and sentence.

4.The appellant's son is a juvenile, is the co-accused and the case against him was splited up and tried before the Juvenile



Justice Board in C.C.No.14 of 2016.

5.The brief facts of the case leading to the conviction of the appellant is as follows:

Subbammal, the deceased is the mother of P.W.1 and P.W.5 and on 8.1.2026, P.W.1 called her mother over phone for having some conversation with her. On the following two days, when she tried to call her over phone, the cell-phone was switched off. Suspecting some danger to her mother, she has asked the neighbour to visit her mother's house and on their visit, they found that the door locked and they were under the impression that she could have gone out. On 11.01.2016, P.W.3 at about 1.00 p.m opened the door of the house and found that the deceased was found in pool of blood and thereafter, the matter was reported to the Police and a case was registered in Crime No.18 of 2016, on the file of Aravakurichi Police Station.

6.Investigation has lead to the appellant and his son are the perpetrators of the crime. The appellant, who was the cultivating tenant under the deceased for about 6 to 7 years back, has visited the



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house of the deceased on 08.01.2026 along with his son. They reached the deceased house and had conversation with her under the pretext of again taking the land on lease. They have fully convinced that the deceased alone was in the residence. After engaging in conversation for some time, they went out and return back to the house of the deceased and stated that they have missed the bus and therefore, they want to stay in the house of the deceased. The deceased has innocently allowed them to stay in the house for a night. In the early morning of 09.01.2016, the accused stage-managed their plan and have robbed the studd and chain and killed her and fled from the scene of occurrence.

7. According to the prosecution, on 08.01.2016, P.W.6 had seen the son of the appellant, who is a juvenile in conflict, in the house of the deceased. P.W.6 had seen the son of the appellant while he was cleaning the tank in the deceased house. The P.W.6, on the very next day on 09.01.2016 early morning at about 3.00 a.m, while returning home from duty, he had again seen the appellant and his son near the house of the deceased. The P.W.7, another resident of that village had also deposed about the presence of the appellant



and his son at about 3.45 a.m near the deceased residence. P.W.9 had deposed about the presence of the accused and his son in the bus-stand and on 9.1.2016 early morning, he saw that accused and his son boarded the coimbatore bus. P.W.10, a passenger in the bus had also seen the appellant/accused and his son travelling with him on 9.1.2016 and they alighted at Pallapatti.

8. Based upon these circumstantial evidence namely, the witnesses who had seen the accused near the house of the deceased, coupled with the fact of identifying the finger print of the son of the accused lifted from SOC, and the fact that the jewels identified as the apparels of the deceased which was pledged with Muthoot Mini Finance by the juvenile (appellant's son) and his mother P.W.13, the prosecution has proceeded to prove the charges against the accused.

9. The trial Court, on appreciating the evidence let in by the prosecution, namely, P.W.1 to P.W.22 and documents Ex.P1 to Ex.P23 and MO1 to M.O.12, had accepted the prosecution case, believing the evidence of P.W.1, P.W.7, P.W.9 and P.W.10, who identified the appellant and his son's presence in the house of the deceased prior



and after the occurrence. The trial Court has also relied upon the evidence of P.W.1, P.W.5, P.W.6, P.W.7 and P.W.9, who had deposed the previous acquaintance of the appellant with the deceased in respect of the lease of her land. The jewels recovered from Muthoot Finance which was pledged by the wife of the appellant(P.W.13) and her son (juvenile in conflict), had been identified as that of the deceased's jewels. Through evidence, her plea that the jewels belong to her has been disbelieved by the trial Court. As a result, the judgment of conviction and sentence has been imposed.

10.The learned counsel for the appellant had made a very impressive argument before this Court by reading the testimony of P.W.6, P.W.7, P.W.9 and P.W.10 and their admission in the cross examination and the contradictions regarding their knowledge about the death of Subbammal vis-a-vis, the intimation to the Police and to the relatives of Subbammal, particularly, P.W.1 and P.W.5. The learned counsel has also submitted that they are neither chance witness, who had the opportunity to see the appellant or his son(Juvenile in conflict) in the house of Subbammal either prior to the date of occurrence or subsequent to the date of occurrence. Invariably, all the



three witnesses P.W.6, P.W.7 and P.W.9 had said that after they saw the appellant near the house of the deceased, they were not in the village and they have gone to Coimbatore, Thanjavur and Dharapuram respectively. Only when they came back to the village, they came to know about the death of Subbammal and only thereafter, they informed P.W.1 and P.W.5 about the doubt against the appellant in the death of the deceased.

11.The learned counsel for the appellant also submitted that the confession recorded by the Police from the juvenile son is totally inadmissible in law and highly doubtful. The claim of Muthulakshmi P.W.13 that the jewels belonging to her(M.O-1 and M.O-2) ought to have been believed by the trial Court. Neither P.W.1 nor P.W.5 were able to show how the deceased has acquired the jewels, when she purchased the jewels or the age of the jewels are not established. Hence, it is improper to hold that the jewels recovered from Muthoot Finance belongs to the deceased. Just because the appellant was a cultivating tenant under the deceased for about 6 to 7 years prior, even assuming that he has seen the accused in and around the house of the deceased on 08.01.2016 or 09.01.2016 by P.W.6, P.W.7 and



P.W.9, the same will not give any conclusive proof that the appellant was the perpetrator of the crime or he had committed the murder of Subbammal. Having regard to the proof of lifting the finger print from the SOC has incriminated only the juvenile son and not the appellant. Therefore, the evidence of P.W.6, P.W.7 and P.W.9 or P.W.10 is not sufficient to hold that the appellant was also present along with the juvenile at the scene of occurrence.

12.The learned counsel for the appellant also submitted that the appellant was taken to judicial custody in connection with another case pending before Kujiliyamparai Police Station in Crime No.7 of 2016 and for the statistics purpose, the appellant and his son has been implicated in the murder case. The learned counsel for the appellant, in the grounds of appeal, had claimed that the finger print lifted from the doors of the house of the deceased not been duly compared with the finger print of the juvenile son(conflict with law).

13.Per contra, the learned Additional Public Prosecutor appearing for the respondent/State submitted that it may be a case of circumstantial evidence and that the evidence let in by the prosecution



had been proved both scientifically and by document and the ocular evidence. The appellant is a known person to the deceased and to the witnesses P.W.6, P.W.7 and P.W.9. The appellant was a lessee under the deceased. He had full knowledge that the deceased was living alone and she has money and jewels with her, the appellant and his son murdered the deceased for gain.

14.The post-mortem report of the deceased indicate that she had sustained the following injury:

உடல் கூறாய்வில் 1. மண்டை ஓடு இடது பக்கவாட்டு எலும்பு உடைந்த நிலையில் இருந்தது (left tempartial vietal) 2. முளையின் இடது பக்கவாட்டு பகுதியில் ரத்தக்கட்டு இருந்தது (Temporo parietalLobe) 3. முன் கழுத்து எலும்பு நல்ல நிலையில் இருந்தது. 4. நெஞ்சுக்கூட்டு எலும்புகள் நல்ல நிலையில் இருந்தது. 5. நுரையீரல்கள் வெளிறிய நிலையில் இருந்தன. 6. இதய அறைகளில் 50 மில்லி அளவுள்ள ரத்தம் உறைந்த நிலையில் இருந்தது. 7. கல்லீரல் வெளிறிய நிலையில் இருந்தது. 8. இரைப்பை காலியாக இருந்தது. 9. சிறுநீரகப்பை காலியாக இருந்தது. 10 கருப்பை அடி இறங்கிய நிலையில் (prolapsed) இருந்தது. மற்ற உறுப்புகள் வெளிறிய நிலையில் இருந்தன.

15.The finger print lifted from the scene of occurrence tallies



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with the finger print of the juvenile son of the appellant. The jewels of the deceased has been identified by the sons of the deceased and the same was recovered from Muthoot Mini Finance at Palayam in Karur District. P.W.13, the wife of the appellant admits that her son took her to Muthoot Mini Finance and she pledged the jewels and got money and used it for her family expenses. A perusal of the records would show that the jewels were pledged on the same day i.e., on 9.1.2016. Therefore, the chain of circumstances clearly proved, without any break. Hence contended that the trial Court has rightly convicted the appellant, which needs no interference by this Court.

16. Heard the learned counsel appearing on either side and perused the records placed before this Court.

17. The Criminal law was set into motion on the complaint given by the daughter of the deceased Subbammal. As per the information, the deceased Subbammal, aged about 70 years was residing alone in her farm house. Their family members involved in finance business. She and her brothers used to visit her mother's house in regular intervals. On 8.1.2016, Subbammal called her and



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exchanged her pleasantries. On the very next day, when she called her mother, the cellphone was switched off. Again on 10.1.2016, she tried her mother over cellphone but on that day also, the cellphone was switched off. Therefore, she called her relatives, Kesavan, son of Ellappan to visit her mother's house and find what had happened to her mother.

18. On 11.1.2026, at about 13.00 hours, Ellappan went to her mother's house, found that the door was locked outside and mother was not found in and around the house. Therefore, he took the assistance of Srinivasan(P.W.2) to open the lock and went inside the room where he found Subbammal dead with injuries. On receiving the said information through Kesavan, she immediately called her brothers and relatives and rushed to her mother's house. On seeing her mother's house, she noticed that a chain weighing about 2 sovereigns and ear stud weighing about $\frac{3}{4}$ sovereigns found missing.

19. Realizing that her mother has been murdered for gain, she has gone to the Police Station and has given a written complaint on 11.1.2016 at about 1.50 hours. On receipt of the complaint, a case



was registered in Crime No.18 of 2016 for the offence under Section 302 and 379 of IPC. The Investigation has lead to the arrest of the second accused, the juvenile on 22.01.2016. He confessed that he along with his father Babu(the appellant herein) committed the murder for gain. The appellant had already knew about Subbammal, planned to commit robbery on her house with the help of his son, a juvenile who had already been under the adverse notice of the Police and been confined in the reformatory home, had gone to the house of the deceased on 08.01.2016.

20.It also come out from the evidence that at the request of the deceased, the juvenile has cleaned the tank of the Subbammal house and that was noticed by one Angammmal, who is the friend of the deceased. One Mr.Selvam, P.W.6, Manager of the Petrol Bunk, came to the house of Subbammal and saw the juvenile engaged in cleaning the tank. On that night, the appellant and his son again went to the house of the deceased. Made her to believe that they had missed the last bus to Karur, got the permission of the deceased to stay in her house over-night. P.W.6, Manager of P.K.S and Muthu Agencies, had deposed that on 09.01.2016 at about 3.00 p.m., when he went to the



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house of Subbammal, he saw a boy cleaning the tank. When he enquired who he is, he has stated that he is the son of Babu, the appellant herein, who was the erstwhile cultivating tenant of the deceased.

21. In the next day morning, at about 3.00 a.m., when he was returning from his petrol bunk while crossing the Subbammal house, he saw the appellant and his son found near the gate of Subbammal. When he enquired them, they told that they are proceeding to bus stand. P.W.7-Selvaraj had seen the appellant and his son at 09.01.2016 at 3.45 am and when he crossed the Subbammal house, the appellant and his son were coming out of the Subbammal house, tensed. When he enquired them what were they doing in the odd hours, they told him that they missed the last bus to their village. Therefore, they have stayed in the house of Subbammal over-night and they are leaving to the bus-stand.

22. P.W.9-Krishnamoorthy, a resident of Eshanatham village had seen the appellant and his son on 09.01.2016 early morning while he was in the tea shop near bus stand. He know that the appellant is the



former cultivating tenant of Subbammal. He noticed the appellant and a 15 years old boy boarding the bus to Coimbatore. P.W.10-Basheer Ahamed, who travelled in the bus proceeding to Coimbatore from Eshanatham on 09.01.2016, he saw the appellant and the boy boarding the bus and alighting at Pallapatti.

23.A combined reading of the witnesses speaks about the presence of the appellant and his son in the house of the deceased on 08.01.2016 and on 09.01.2016. Their movement also indicates that they moved from the house of the deceased on 09.01.2016 at about 3.45 a.m and boarded the bus proceeding to Coimbatore at about 4.30 a.m. From the evidence of P.W.1, the de-facto complainant, the gruesome murder of Subbammal had come to light on 11.01.2016 when Kesavan(P.W.3) and Srinivasan(P.W.4) opened the locked door of the house of the deceased and saw her in her bed dead. Only thereafter, the witnesses P.W.6, 7, 9 and 10 were able to correlate with the confrontation with the appellant and his son earlier, as spoken in the evidence and the same has been informed to the Police.

24.The learned counsel for the appellant submitted that



though these witnesses namely, P.W.6, 7, 9 and 10 had stated in their cross-examination that on 13.01.2016 and 14.01.2016, they informed to the daughter of Subbammal(P.W.1) that they saw the appellant in the house of Subbammal on 09.01.2016, however, neither P.W.21 nor her brother-P.W.5 corroborate these version. Therefore, the learned counsel for the appellant contended that the trial Court had erred in holding that P.W.6, P.W.7 and P.W.9 as witnesses to prove the last seen theory against the accused persons, qua before and after the commission of offence. The learned counsel would also submit that the suspected time of death as per Post-mortem report and the time which the witness saw the appellant near the house of the deceased also does not tally. However, this submission does not carry any merit for disbelieving the case of the prosecution, since the evidence of P.W.6, P.W.7, P.W.9 and P.W.10 are so natural and cogent which proved the movement of the accused persons from 08.01.2016 to 09.01.2016 3.45 a.m, and P.W.10 had deposed that the appellant and his son travelled along with him upto Pallapatti on that day.

25.On the very same day, the jewels of the deceased had been pledged at Muthoot Finance as per the evidence of P.W.12. Son of



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the appellant along with the wife of the appellant had gone to Muthoot Finance, pledged the white stoned stud and a gold chain Ex.P7 correlating M.O.1 and M.O.2 along with the receipt issued by Muthoot Finance marked as Ex.P8 been spoken by P.W.12. The Deputy Manager of Muthoot Finance, who after obtaining the Aadhaar Card and Voters Identity Card of P.W.13-Muthulakshmi, the wife of the appellant, they have advanced a loan of Rs.23,000/- towards the pledge of the gold chain (M.O.1). Within a week, again she had come along with her son on 16.01.2016, pledged the white stoned stud and borrowed Rs. 32,000/-.P.W.12-Muthulakshmi had admitted that she pledged the jewels in her name. She being a deaf and dumb witness, with the assistance of interpreter, her testimony was recorded. Though she claims that she received only Rs.10,000 for pledging the first jewel and another Rs.10,000/- for pledging the second jewel, her son, the juvenile conflict in law, took to the finance company for availing the loan in her name. But she is not aware of the exact particulars and place of the finance company. Though the learned counsel for the appellant claims that the jewels belong to the appellant's wife, who took her son to pledge the jewels, there is no evidence to show that M.O.1 and M.O.2 belongs to P.W.13. The daughter and son of the



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deceased have identified these jewels as the jewels belong to her mother.

26.The finger print lifted from the doors of the deceased house when compared with the specimen finger print of the second accused, the juvenile conflict in law, in another split up in S.C.No.14 of 2016, on comparison with the finger print lifted from the place of occurrence has tallied as per the opinion of the Finger Print Expert which is marked as Ex.P4.

27.The learned counsel for the appellant made an alternative argument that even if the evidence of prosecution witnesses and the scientific expert's opinion accepted as a truth, it will only incriminate the second accused/the juvenile in conflict with law and not the appellant, the father of the juvenile conflict in law. This Court reject the above argument for the following reason.

28.Babu, the appellant herein is the person, who had acquaintance with the deceased. He had been the cultivating tenant under the deceased few years ago. It is the information disclosed by



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the appellant in his confession statement that he and his son went to the house of the deceased during morning hours of 08.01.2016 and again went to her house on the same day night at about 9.00 p.m. The co-accused confession also corroborates this. Visit of the appellant and his son to the house of the deceased on 08.01.2016 at about 9.00 p.m is a disclosure of fact which is within the knowledge of the appellant. From the evidence of P.W.6, it is seen that on that day, the son of the accused, who is a juvenile in conflict with law, was seen by P.W.6 in the house of the deceased. The finger print of the co-accused, who is a juvenile in conflict with law, when compared with the finger print lifted from the doors of the house of the deceased tallied.

29.In addition to that, P.W.3 and P.W.4 had deposed that when they went to the house of the deceased on the request of P.W.1, they saw the doors locked from outside. It is the appellant and his son, who is seen near the house of the deceased on 09.01.2016 at about 3.00 a.m in the morning by P.W.6. Similarly, in and around 3.45 a.m by P.W.7 and soon thereafter, P.W.9 had seen them boarding Coimbatore bus and P.W.10 had seen them travelling along with him and got down at Pallapatti. There cannot be better evidence that



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bring in the chain of events through the evidence adduced by the prosecution in this case.

30.No doubt, this is a case of circumstantial evidence and the circumstantial evidence clearly points out that the accused/appellant and his son alone are known to them. The presence of the appellant in the house of the deceased along with his son, the finger print of the appellant's son in the doors of the deceased house, the gruesome murder of the deceased and other vital parts like recovery of ear stud and gold chain from Muthoot Finance which admittedly pledged in the name of the appellant's wife who was accompanied by the son of the appellant, points out the needle of guilt towards the appellant and his son and none other. Therefore, this Court finds that the findings of the trial Court has to be affirmed since it has considered and appreciated the evidence properly and arrived at a right conclusion, which does not warrant any interference by this Court and thus the Criminal Appeal fails.

31.In the result, the Criminal Appeal is dismissed, confirming the conviction and sentence imposed on the appellant in S.C.No.62 of



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2016, dated 20.10.2016, on the file of Fast Track Mahila Court, Karur.

Consequently, connected Miscellaneous Petition is closed.

[G.J.,J.] [C.K.,J.]

13.03.2024

NCS : Yes
Index : Yes
Internet : Yes / No

vsn

To:

- 1.The Judge,
Fast Track Mahila Court,
Karur.
- 2.The Inspector of Police,
Aravakurichi Police Station,
Pudhukkottai,
(In Crime No.18 of 2016).
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

20/21



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