



Crl.A.No.534 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2026

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.No.534 of 2019

State represented by
The Inspector of Police,
Kumarapalayam Police Station,
Namakkal District.
Crime No.280 of 2014

Appellant(s)/Complainant

Vs

1.Gopinath
S/o.Shanmugam
No.81/T, Indira Nagar, Kalaimagal Street,
Kumarapalayam, Namakkal District.

2.Nandakumar
S/o.Nagaraj Sockkappan
near Tharipattarai, Kathalapettai,
Kumarapalayam, Namakkal District.

Respondent(s)/respondents



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Criminal Appeal filed under Section 378 Cr.P.C. against the judgment dated 05.04.2019 passed in S.C.No.77 of 2016 on the file of the Additional District and Sessions Court, Namakkal and to set aside the same.

For Appellant(s): Mr.A.Damodaran
Additional Public Prosecutor

For Respondent(s): Mr.E.V.Chandru @ Chandrasekaran
Legal aid counsel

JUDGMENT
(delivered by M.Jothiraman, J.)

Challenging the judgment dated 05.04.2019 passed in S.C.No.77 of 2016 on the file of the Additional District and Sessions Court, Namakkal, the appellant/State has preferred the above appeal.

2. The brief case of the prosecution is as follows:

2.1 PW1—Karunakaran, who is the brother and son of the deceased Madheswari and Krishnaswamy, respectively, deposed that he is doing weaving business; the deceased were staying in a house near his weaving shed; after completing his work, he usually hand over the weaving shed key



to his father and then, the workers, who worked under him, usually collect key from his father at 4.00 a.m.; on 04.05.2014 at 4.30 a.m., while he was sleeping, his workers viz. Shanmugam (PW4) and Mani (PW5) knocked his door; he immediately woke up and enquired them; they stated that even after knocking the door, his (PW1's) father did not open the door and while they saw inside the house through the gap in the door, his (PW1's) father was lying on the floor; immediately, they rushed to his father's house and opened the door and saw that his father was dead in a pool of blood with cut injury in his neck and next to his father, his (PW1's) sister also was also dead in a pool of blood with cut injury on her neck; chilly powder was sprinkled on them; he went to the police station and lodged the complaint (Ex.P1) and signed in the FIR (Ex.P16) and his signature in the FIR was marked Ex.P2.

2.2 PW2—Bhuvaneshwari, who is the granddaughter of the deceased Krishnaswamy, deposed that she heard the news through her aunt Padmavathi that someone had murdered her grandfather and mother and therefore, she rushed to the place of occurrence and saw that her grandfather and mother were dead in the pool of blood with cut injury on their necks.



2.3 PW3—Shanmugam, deposed that he knew PWs.1 and 2; on 04.05.2014 around 5.00 a.m., he was informed by his brother that somebody had murdered Krishnaswamy and Madheswari; therefore, he rushed to the place of occurrence and saw that Krishnaswamy and Madheswari were lying in a pool of blood with cut injury on their necks.

2.4 PW4—Shanmugam and PW5—Mani, deposed that they knew PWs.1 to 3; usually they get the key from the deceased Krishnaswamy at 4.00 a.m. for doing their weaving work; on 04.05.2014 at 4.00 a.m., when they knocked the door of the house of Krishnaswamy, they did not get any response and they also rang the calling bell thrice; when they noticed through the door gap, they saw Krishnaswamy laying on the floor and immediately informed the same to PW1 and PW1 rushed to the place of occurrence and they found that Krishnaswamy and Madheswari were dead with cut injury on their necks.

2.5 PW6—Velumani, deposed that through the intimation given by Rajakannan he came to know that on 04.05.2014, Krishnaswamy and Madheswari were murdered by someone; he went to the place of occurrence



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and at that time, the police have visited the place of occurrence and prepared the observation mahazar (Ex.P19), in which, he has signed as a witness in the observation mahazar along with one Rajakannan and his signature in the observation mahazar was marked as Ex.P3; the police have also drawn rough sketch (Ex.P20) and seized blood in a white cloth under seizure mahazars Ex.P23 and P24, in which, he has signed as a witness.

2.6 PW7—Ranganathan, Head Constable, deposed that on 04.05.2014 around 7.00 a.m., as per the instructions given by their Department, he went to the place of occurrence along with a sniffer dog.

2.7 PW8—Guruvendhan, Village Administrative Officer (VAO), deposed that on 18.05.2014 at 8.00 a.m. while he was in his office with his Assistant Ramaraj, A1 surrendered before him and voluntarily gave confession statement and recorded the same under Ex.P7; he has handed over the first accused along with the special report before the Inspector of Police, Kumarapalayam Police Station; on enquiry by the Investigating Officer, the first accused voluntarily gave confession statement and the same has been recorded in their presence; his (PW8) signature found in the



confession statement of the first accused is Ex.P8; in pursuance of the confession statement given by the first accused, the first accused took them to his house and handed them over Rs.24,000/- and a gold chain with white stone (M.O.3) and the same has been seized under mahazar (Ex.P29); he has signed in the mahazar and his signature is (Ex.P9); further, the accused took them to the place, where, he has concealed the material objects near the river bed and he handed over the knife (M.O.8) and sacred thread with keys (M.O.7) and the same has been seized under mahazar (Ex.P30); thereafter, the Inspector of Police arrested the second accused and juvenile accused near Kavery Pudhupalam; on enquiry, the second accused has given voluntary confession statement and the same has been recorded in their presence and his (PW8) signature in the confession statement of A2 was marked as (Ex.P13); the admissible portion of the confession statement of A2 was marked as (Ex.P12); in pursuance of the confession statement of the second accused, the second accused took them to his house and handed over the ring imprinted with the alphabets NSK (M.O.1) and also handed over the gold ring embedded with red stone (M.O.2) and the same have been recovered under mahazars (Exs.P33 & 34) and his (PW8's) signature in the mahazar was marked as (Ex.P14).



2.8 PW9—Radhakrishnan, Head Constable, deposed that on 04.05.2014 at 12.10 p.m. after conducting the inquest over the dead bodies by the Inspector of Police, he sent the dead bodies to the Government Hospital, Kumarapalayam and also handed over the requisition letter (Ex.P15) for conducting postmortem; after conducting postmortem, he handed over the dead bodies to the relatives; he also seized the clothes collected from the bodies of the deceased under special report and handed over the same to the Inspector of Police.

2.9 PW10—Ayyavu, Special Sub-Inspector of Police, deposed that he has handed over the express FIR to the Court concerned at 11.30 a.m. on 04.05.2014.

2.10 PW11—Gajendran, Special Sub-Inspector of Police, deposed that on 04.05.2014 at 6.00 a.m. he has received the complaint (Ex.P1) and registered a case in Crime No.280 of 2014 for the offences under Sections 452 and 302 IPC and prepared the printed FIR (Ex.P16) and placed the same before the Inspector of Police for further investigation.



2.11 PW12—Dr.Shanmugasundaram, deposed that he had received the requisition letter (Ex.P15) from the Constable (PW9) to conduct autopsy on the bodies of the deceased, pursuant to which, he conducted postmortem and issued postmortem certificates Exs.P17 & P18 and opined that the deceased would have died 12-18 hours prior to the autopsy and also opined that the injuries would have been caused using the knife (M.O.8).

2.12 PW13—Sivaraman, Inspector of Police, deposed that on 04.05.2014 at 6.45 a.m., he had received the FIR (Ex.P16) and took up the case for investigation; he went to the place of occurrence and prepared observation mahazar (Ex.P19) and drawn rough sketch (Ex.P20) in the presence of witnesses PW6 and Rajangam; again, in the presence of the same witnesses, he prepared observation mahazar (Ex.P21) and drawn rough sketch (Ex.P22); thereafter, he collected bloodstained white colour cloth (M.O.9) under the seizure mahazar (Ex.P24) and also taken photographs through a photographer; the photographs and the CD were marked as Ex.P25; he further arranged for sniffer dog investigation; thereafter, in order to avoid law and order issues, he sent the bodies of the deceased to the hospital; then, he went to the Government Hospital and conducted inquest



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over the bodies of Krishnaswamy and Madheswari in the presence of panchayathars and prepared inquest reports Exs.P26 and P27, respectively and gave requisition letter (Ex.P15) to conduct autopsy to the Government Hospital, Kumarapalayam, through a Head Constable (PW9); after conducting postmortem, the Head Constable (PW9) handed over the clothes worn by Krishnaswamy and Madheswari and the same were sent to the Court concerned under Form 95 (Ex.P35). he enquired the witnesses and recorded their statements; thereafter, he altered the case from one under Sections 452 and 302 IPC to one under Sections 380 and 302 IPC; he sent the reports to the Court concerned; in continuation of the investigation, while he was in the police station on 18.05.2014, the first accused was produced by PW8 along with the special report and on enquiry, he arrested the first accused and on enquiry, A1 has given voluntary confession statement and the admissible portion of the confession statement of A1 was marked as Ex.P28; in pursuance of the confessions statement of A1, they went to the house of A1, where, A1 handed over Rs.24,000/- and 4½ sovereigns gold chain with white stone embedded dollar and the same were recovered under the seizure mahazar (Ex.P29); further, A1 took them to the river bed, where, beneath a rock, A1 took the knife (M.O.8) and three keys



with sacred thread and the same were recovered under the seizure mahazar (Ex.P30); thereafter, on the same day, around 13.30 hours, he (PW13) arrested A2 and juvenile accused and on enquiry, A2 gave voluntary confession statement and the admissible portion of the confession statement of A2 was marked as Ex.P32; in pursuance of the confession statement of the juvenile accused, they went to his house, where, he handed over the gold ring imprinted with alphabets NSK (M.O.1) and the same was recovered under the seizure mahazar (Ex.P33); A2 also handed over the ring embedded with red stone (M.O.2), which was recovered under the seizure mahazar (Ex.P34); thereafter, he remanded the accused in judicial custody and the case properties to the Court concerned under Form 95 (Ex.P35).

2.13 PW14—Veludevan, Inspector of Police, took up the investigation from PW13 and in continuation of the investigation, he sent the internal organs collected from the bodies Krishnaswamy and Madheswari for chemical analysis and received the viscera reports (Exs.P36 and P37), respectively and he has also received the forensic science report (Ex.P38); he examined the witnesses and recorded their statements.



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2.14 After completing the investigation and based on the evidence collected, the Investigating Officer (PW14) filed a final report in P.R.C.No.32 of 2015 before the Judicial Magistrate, Thiruchengode, against the respondents/accused for the offences under Sections 449, 302, 302 r/w 34, 302 r/w 397, 392 and 201 r/w 302 IPC.

2.15 On appearance of the respondents/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.77 of 2016 and was made over to the Additional District and Sessions Court, Namakkal, for trial.

2.16 The trial Court framed the following charges against the respondents/accused herein:

Accused	Charges framed under Section
Gopinath (A1)	449, 302 (2 counts), 302 r/w 397 and 201 r/w 302 IPC
Nandakumar (A2)	449, 302 r/w 34, 392 and 201 r/w 302 IPC

When questioned, the respondents/accused pleaded 'not guilty'.

2.17 To prove the guilt of the respondents/accused, the prosecution examined fourteen witnesses and marked thirty nine exhibits and ten material objects.



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2.18 After completion of prosecution side evidence, when the respondents/accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined on the side of the defense and no document was marked.

2.19 Upon appreciation of the oral and documentary evidence and upon hearing either side, the trial Court, found that the prosecution has failed to prove its case beyond all reasonable doubts and by judgment dated 05.04.2019 in S.C.No.77 of 2016, acquitted the respondents/accused of all the charges.

2.20 Aggrieved over the same, the appellant/State has preferred the above appeal.

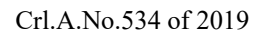
3. The learned Additional Public prosecutor appearing for the appellant/State would submit that this case is based on circumstantial evidence. The Court below erred in observing that the alleged recovery from



the accused was not proved through any independent witness and the court below failed to consider the law laid down by the Hon'ble Supreme Court regarding Section 27 of the Indian Evidence Act, 1872, in the case of ***Sanjay @ Kaka Vs. State (NCT of Delhi)*** reported in ***2001 MLJ (Crl) 202***, wherein, it has been held that for recovery under Section 27 of the Act, *ibid.* no independent witness is necessary at all. Further, he would submit that the Court below committed an error in rejecting the evidence of PW1, since PW1 is the one, who lodged the complaint (Ex.P1) and set the law in motion and also identified the gold jewels viz. ring imprinted with the alphabets NSK (M.O.1), gold ring embedded with red stone (M.O.2), 4½ sovereign gold chain (M.O.3) and the keys tied to the sacred thread (M.O.7), owned by his father Krishnaswamy and further, these materials objects were recovered in pursuance of the confession statement given by the accused. He would further submit that PW8/VAO is a responsible person independent of the Police Department, who categorically deposed about extrajudicial confession given by the accused, handing over of the accused before the Investigating Officer, confession statements given by A1 and A2, identification and recovery of the material objects. He would further submit that this is a case of double murder, which happened in the wee hours and



therefore, there cannot be a direct witness to the occurrence, however, there are sufficient circumstantial evidence available, which undoubtedly point towards the guilt of the accused. The materials objects recovered in pursuance of the confession statement of the accused and the postmortem certificates (Exs.P17 & P18) issued by PW12 clearly state that the knife (M.O.8) might be the cause for the injury sustained by the deceased. Further, when the prosecution successfully proves the offence of robbery and murder were committed in one and the same transaction and soon thereafter, the stolen properties were recovered from the same person, the Court may legitimately draw a presumption not only of the fact that the person, in whose possession the stolen articles were found, committed robbery, but, also that he committed murder. He would further submit that the Court below gave too much importance to the contradiction between the evidence of PWs.1 and 4 with regard to the title of the power loom factory and PW4 is only an employee and he need not necessarily have knowledge about the title of the property. *Ergo*, the prosecution has fully proved the case beyond all reasonable doubts and therefore, the judgment of the Court below is liable to be set aside and the respondents/accused should be convicted of the charges framed against them.



5. The learned counsel appearing on behalf of the respondents/accused would further submit that the prosecution has miserably failed to link the finger prints lifted from the scene of occurrence



with the respondents/accused. Though PW13 in his cross-examination categorically deposed that they have lifted the finger prints from the scene of occurrence, they have not chosen to take steps to compare with the finger prints of the accused from the finger print expert. Though PW13 admitted that the finger prints lifted from the scene of occurrence tallied with the deceased and also submitted a report to that effect before Deputy Superintendent of Police, the said report has not been placed before the Court below. Therefore, the prosecution miserably failed to prove the case beyond all reasonable doubts.

6. We have considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. It is to be noted that this is a case of double murder happened in the wee hours and there cannot be a direct evidence. This case rests on the circumstantial evidence and the same has to be proved with sufficient circumstances, which undoubtedly point towards the guilty of the accused.



8. According to the case of the prosecution, on 03.05.2014 around 10.30 p.m., the respondents/accused along with their juvenile friend knocked the house of Krishnaswamy; when Krishnaswamy opened the door, they trespassed into the house and intended to commit robbery and murder inside the house; while A1 gagged the mouth of Krishnaswamy and pushed him inside the hall, A2 caught hold of Krishnaswamy enabling A1 to cut his neck using the deadly weapon knife (M.O.8); then, the juvenile accused gagged the mouth of Madheswari enabling A1 to cut her neck; thereafter, they committed robbery of Rs.30,000/-, two gold rings and a gold chain; later, all the three accused caused disappearance of evidence by washing and burying the knife (M.O.8) and keys with sacred thread under the rock in the river bed near the house of A1; the case of the juvenile accused was filed before Juvenile Justice Board and separate proceedings has been initiated.

9. In order to prove the guilt of the accused, the prosecution has relied upon the following circumstances:

- (a) Extrajudicial confession
- (b) Recovery
- (c) Medical evidence



(a) Extrajudicial confession and (b) Recovery:

10. PW8—Guruvendhan, Village Administrative Officer (VAO), in his evidence, has stated that on 18.05.2014 at 8.00 a.m. while he was in his office with his Assistant Ramaraj, A1 surrendered before him and voluntarily gave confession statement (Ex.P7) and handed over the first accused along with the special report before the Inspector of Police, Kumarapalayam Police Station, where, the first accused voluntarily gave confession statement and the same has been recorded in their presence, pursuant to which, A1 took them to his house and handed them over Rs.24,000/- and a gold chain with white stone (M.O.3) and the same has been seized under seizure mahazar (Ex.P29). Further, the accused took them to the place, where, he has concealed the material objects near the river bed and he handed over the knife (M.O.8) and sacred thread with keys (M.O.7) and the same has been seized under seizure mahazar (Ex.P30). Thereafter, the Inspector of Police arrested the second accused and juvenile accused near Kavery Pudhupalam and on enquiry, A2 has given voluntary confession statement (Ex.P12), pursuant to which, A2 took them to his house and handed over the ring imprinted with the alphabets NSK (M.O.1) and also



handed over the gold ring embedded with red stone (M.O.2) and the same have been recovered under seizure mahazars (Exs.P33 & 34).

11. PW13—Sivaraman, Inspector of Police, in his cross-examination has categorically submitted that while lodging the complaint (Ex.P1), PW1 has not stated anything about the missing of the gold jewels and cash. As per the evidence of PW1, 12 days after the incident, while he was cleaning the house, he found that the jewels and cash were missing in the wardrobe belongs to Krishnaswamy. Further, as per the evidence of PW8, A1 was surrendered before him on 18.05.2014 and in pursuance of the confession statement of A1, the material objects were seized, whereas, when PW13 visited the scene of occurrence and enquired PW1, PW1 did not say anything about the missing of gold jewels and cash.

12. As per the evidence of PWs.1 and 2, after 12 days from the incident, while they were cleaning the house, they noticed that some gold jewels and cash were missing. When PWs.1 and 2 deposed that when they reached the place of occurrence, immediately they came to know that Krishnaswamy and Madheswari were murdered and they saw that the



wardrobe was in an opened condition, whereas, while lodging the complaint (Ex.P1), PW1 has not stated anything about the missing jewels and cash, which creates serious doubt. The extrajudicial confession given by A1 was highly doubtful, since PW8 is not known to the accused and is not necessary for him to give confession statement before PW8.

(c) Medical Evidence:

13. PW12, the doctor who conducted autopsy on the bodies of the deceased and issued postmortem certificates Exs.P17 & P18, opined that the deceased would have died 12-18 hours prior to the autopsy and also opined that the injuries would have been caused using the knife (M.O.8).

14. It is to be further noted that PW13, in his cross-examination, has categorically admitted that he had lifted the finger prints from the scene of occurrence, but, he has not taken steps to compare the same with the accused. He also deposed that the finger prints lifted from the scene of occurrence tallied with the finger prints of the deceased and submitted a report to that effect before the Deputy Superintendent of Police, whereas, the said report has not been placed by the prosecution during the course of



trial. The prosecution has miserably failed to explain as to when they have lifted the finger prints from the scene of occurrence and as to why they have not chosen to compare the same with the finger prints of the accused, which creates grave reservations against the case of the prosecution.

15. Except the evidence of PW8, no other independent witnesses were examined to prove the recovery. When PW1 lodged the complaint (Ex.P1) and set the law in motion, only after a lapse of 12 days *i.e.* on 18.05.2014, PW1 informed about the missing of cash and jewels, when A1 allegedly surrendered before PW8. The prosecution has not sent the materials objects such as knife (M.O.8) and bloodstained cloth (M.Os.9 and 10) for forensic examination and the prosecution has failed to connect the accused and the weapon (M.O.8) allegedly used in the offence. PW6, in his cross-examination, has categorically admitted that he did not know as to what was written in the observation mahazars (Exs.19 and 21) and as to how many properties were recovered under the mahazars (Exs.P23 and P24). The prosecution has utterly failed to prove the case beyond all reasonable doubts with the chain of circumstances.



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16. In view of the foregoing discussions, this Court is of the view that the trial Court has rightly found that the prosecution has foundered in proving its case beyond a shadow of a doubt. We do not find any perversity in the findings arrived at by the trial Court warranting interference.

In the result, we find no reason, much less any good reason, to interfere with the judgment and order of acquittal that has been passed by the trial Court and consequently, this criminal appeal is dismissed by confirming the judgment dated 05.04.2019 passed in S.C.No.77 of 2016 on the file of the Additional District and Sessions Court, Namakkal.

(P.V., J.) (M.J.R., J.)
27.01.2026

nsd
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No



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To

1.The Additional District and Sessions Judge,
Namakkal.

3.The Inspector of Police,
Kumarapalayam Police Station,
Namakkal District.

4.The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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