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CRL A No.789 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11-06-2026

PRONOUNCED ON: 16-07-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 789 of 2019

Mathi @ Valarmathi
W/o. Murugesan, No.107, Amman Koil Street,
Karaikalmedu, Karaikal.

...Appellant/Sole accused

Vs

The State Rep. By
The Inspector of Police, Town Police Station,
Karaikal, Pudhucherry,
(Crime No.107 of 2015).

...Respondent

Prayer : Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the judgment of conviction and sentence dated 06.11.2019 passed in S.C.No.07 of 2018 by the learned District and Sessions Judge, Karaikal and allow this appeal.

For Appellant: Mr.R.Srinivas, Sr. Counsel
for Ms.V.Mythili



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CRL A No.789 of 2019

For Respondent: Mr.M.V.Ramachandramurthy,
Public Prosecutor [Puducherry]

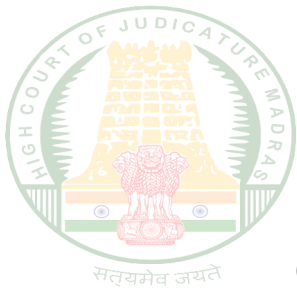
JUDGMENT

(Judgment of the Court was delivered by Sunder Mohan J.)

This Criminal Appeal has been filed by the sole accused, who has been convicted for the offence under Sections 302 and 382 of the Indian Penal Code (hereinafter referred to as “*the IPC*”) and sentenced as follows:

Offence under Section	Sentence imposed
302 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo one year simple imprisonment.
382 IPC	To undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo one year simple imprisonment.

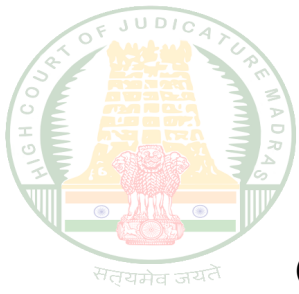
2(i) It is the case of the prosecution that the deceased aged about 75 years was living alone in her house; that the appellant was known to her; that in order to commit robbery of the gold chains and ear studs of the deceased, the appellant had caused the death of the deceased by smothering her mouth and nose with hands; that thereafter, to divert attention had scattered cigarette butts at the scene of occurrence; and thus committed the aforesaid offences between 10.00 p.m. of 28.06.2015 and 8.15 a.m. of 29.06.2015.



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(ii) PW1, the nephew of the deceased had lodged a complaint [Ex.P1], which was registered by PW14, the Sub-Inspector of Police as an FIR [Ex.P12] in Cr.No.107 of 2015 on the file of the respondent under Section 174 Cr.P.C. PW1 had stated in the complaint that one Velmurugan [PW5] had informed him that his aunt, the deceased committed suicide by hanging; that when he went to the scene of occurrence, he found the deceased hanging by her saree and a nylon rope; and that the deceased was last seen at her house on 28.06.2015 at 10.00 p.m., by one Theivanai.

(iii) PW14 had forwarded the FIR to the Executive Magistrate, prepared Observation Mahazar [Ex.P3], Rough Sketch [Ex.P2] and seized an empty cigarette box [M.O.12], a half-burnt cigarette [M.O.8], kerosene lamp [M.O.14], match box [M.O.9], a human tooth [M.O.13], nylon rope [M.O.1] and the saree [M.O.2], under the seizure mahazar [Ex.P4]. Thereafter, he conducted the inquest and prepared the inquest report [Ex.P13] and sent the corpse for postmortem. He examined a few witnesses and came to know on 02.07.2015 that the appellant had made a payment of Rs.80,000/- to the Panchayat towards her debts. Thereafter, suspecting homicide, he altered the offence to Section 302 IPC and handed over the investigation to PW15. The alteration report was marked as Ex.P14.

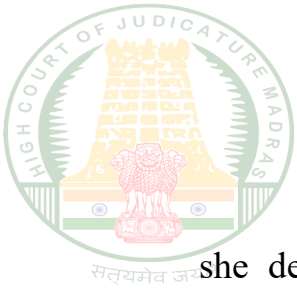


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(iv) PW15 conducted further investigation, examined the postmortem doctor and few other witnesses, arrested the appellant and on the confession of the appellant, seized the Pledge Receipt [Ex.P5] from her house, seized the gold articles which were sold by the appellant to PW9 and after obtaining the postmortem report, filed the final report on 27.10.2015 against the appellant before the learned Judicial Magistrate No.II, Karaikal.

(v) On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with. The case was committed to the Court of Sessions and was made over to the learned District and Sessions Judge, Karaikal, for trial, which was taken on file as S.C.No.07 of 2018. The trial Court framed charges against the appellant for the offences under Sections 382, 302 and 201 of the IPC and when questioned, the appellant pleaded 'not guilty'.

(vi) To prove its case, the prosecution had examined 15 witnesses as P.W.1 to P.W.15 and marked 18 exhibits as Ex.P1 to Ex.P18, besides 15 material objects, viz., M.O.1 to M.O.15. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against her,



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she denied the same. The appellant neither examined any witness nor marked any document on her side.

(vii) The trial Court framed three charges against the appellant under Sections 382, 302 and 201 of the IPC, found the appellant guilty of offences under Sections 302 and 382 of the IPC and acquitted her of the offence under Section 201 of the IPC. and sentenced her as stated above. Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3. Mr.R.Srinivas, learned senior counsel for the appellant, would submit that the prosecution created evidence to falsely prosecute the appellant; that several vital documents have not been seized which falsifies the prosecution case; that motive has not been established; that recovery cannot be believed; that the prosecution had not established that the death was homicidal; and that in view of the missing links, the trial Court ought not to have convicted the appellant for the aforesaid offences and therefore, prayed for acquittal.



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4. Mr.M.V.Ramachandramurthy, the learned Public Prosecutor [Puducherry], *per contra* submitted that the case was originally registered under Section 174 Cr.P.C., and later during investigation it was found that the appellant had committed murder for gain and had taken away the jewels of the deceased; that she, thereafter, had pledged one jewel and sold two other jewels to repay her debts; that since the relatives of the deceased themselves had not complained of murder, there was no necessity for the police to falsely implicate the appellant; and that considering the various circumstances established by the prosecution, the trial Court was justified in convicting the appellant and hence, prayed for dismissal of the appeal.

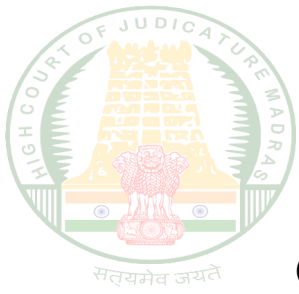
5. (i) As stated above, the prosecution examined 15 witnesses. PW1 is the nephew of the deceased and is the defacto complainant. He came to know of the occurrence through PW5, who was a Cashier working in the Panchayat Office. It was on his complaint, an FIR was registered under Section 174 Cr.P.C. He would depose that the jewels that was seized pursuant to the confession of the appellant belonged to his aunt, the deceased. PW2 is the grandson of the deceased. His evidence corroborates



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the evidence of PW1. PW3 is the neighbour and a fisherman by profession and is a hearsay witness. PW4 is one of the Panchayatars and a fisherman by profession. He speaks about the fact that the appellant owed money to several creditors, who had complained to the Panchayat; that on 02.07.2015, the appellant had paid a sum of Rs.80,000/- to the Cashier, Velmurugan [PW5] for repaying her debts. PW5 is the Cashier in the Panchayat office, who first informed PW1 the fact that the deceased was found hanging in her house. He also corroborates the evidence of PW4, as regards the complaints received by Panchayat office and as to the payment of Rs.80,000/- made by the appellant on 02.07.2015.

(ii) PW6 speaks about the proximity between the appellant and the deceased. She would depose that the appellant used to visit the house of the deceased regularly to take care of her needs and was more like a domestic helper to the deceased. PW7 is the petty-shop owner who is said to have sold a cigarette packet to the appellant on 28.06.2015 at about 10.00 p.m. and he had identified the empty cigarette packet [M.O.12] shown to him as the one that he had sold to her on 28.06.2015.

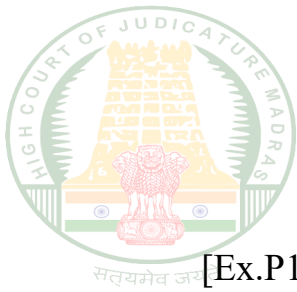


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(iii) PW8 was working as a Manager in Sri Veerabathira Benefit Fund.

He speaks about the fact that the appellant had pledged a gold chain weighing 15.900 gms and received Rs.24,000/- as loan. He had also marked Ex.P5, which was seized from the residence of the appellant on her confession. Ex.P5 is the Jewel Loan Receipt said to have been issued by the Benefit Fund to the appellant. PW9 runs a Jewellery Shop and speaks about the purchase of gold chain and a pair of earrings weighing around three sovereigns from the appellant on 30.06.2015 and paying Rs.51,000/- as consideration. PW10 is the Revenue Inspector, who had signed as a witness in the confession of the appellant and speaks about the seizure of gold jewels from PW8 and PW9 at the instance of the appellant.

(iv) PW11 is a hearsay witness and speaks about the fact that he saw the deceased hanging with a saree and a rope around her neck. He had signed as a witness in the Observation Mahazar [Ex.P3]. PW12 is the neighbour, who had first seen the deceased hanging. She had also found cigarettes and match box in the house. PW13 is the Doctor, who had conducted the postmortem and had opined that the deceased died '*due to asphyxia as a result of hanging*'. He had issued the postmortem certificate



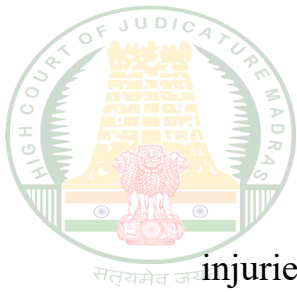
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[Ex.P11]. PW14 is the Sub Inspector of Police, who had registered the FIR as stated earlier and PW15 is the Investigating officer.

6. The case is based on circumstantial evidence. The prosecution relies upon the circumstances of

- (a) Motive.
- (b) The appellant being proximate to the deceased.
- (c) The appellant pledging jewels with PW8 and selling a few jewels to PW9 and paying Rs.80,000/- to the panchayat to clear her debts.
- (d) Recovery of jewels from PW8 and PW9 on the confession of the appellant.

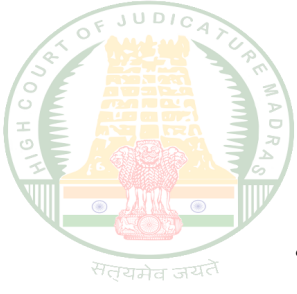
7. (i) Before we analyse the circumstances relied upon by the prosecution, it is necessary to ascertain if the prosecution has established that the deceased suffered a homicidal death. According to the prosecution, as could be seen from the charge, the appellant caused the death by smothering by using her hands. The doctor who conducted the postmortem [PW13] had issued Ex.P11, the postmortem certificate. In his report PW13 has stated that the '*death is due to asphyxia as a result of hanging*'. However, in the chief examination, the doctor had stated that some of the



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injuries found on the upper lip of the deceased could have been caused if someone had pressed with hands on the lips. He found a tooth missing. However, he could not definitely say that the tooth shown to him during examination belonged to the deceased.

(ii) In the cross-examination, the doctor had stated that the hanging was prior to death. He would further add that the death could have been caused by smothering and also due to hanging. But none of what he had stated during the examination is reflected in his report. The doctor had not stated about smothering in his report. He had admitted in the cross-examination that there would be contusions in the nose if the deceased had been smothered and no such contusions were found. In fact, to a specific question put forth by the defence, the doctor had stated that the injuries on the knees could have been caused if the knee came into contact with a rough surface while hanging. It is, therefore, the definite opinion of the doctor that hanging was 'ante-mortem' and the death was due to hanging primarily, which is quite contrary to the prosecution case that the deceased died due to smothering. The relevant portion in the cross-examination is extracted hereunder for better appreciation.



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“கேள்வி: தூக்கு சாவிற்கு முந்தைய தூக்கா சாவிற்கு பிந்தைய

தூக்கா?

பதில்: சாவிற்கு முந்தைய தூக்கு

கேள்வி: இறப்பிற்கு smotheringம் தூக்கில் தொங்குவதும் தான்

காரணமா?

பதில்: தூக்கில் தொங்கியது தான் முதன்மையான காரணம்.

Smotheringக்கான முயற்சிகள் நடந்துள்ளது.

நீதிமன்றத்தின் அனுமதியின் பேரில் மறு குறக்குவிசாரணை

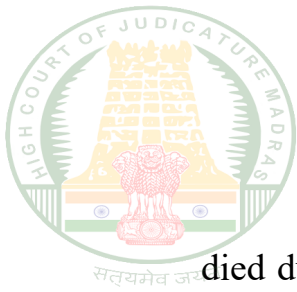
தூக்கில் தொங்கும் போது முழுங்கால் கடினமான

பகுதியில் பட்டு முழுங்காலில் ஏற்பட்ட காயங்கள் ஏற்பட

வாய்ப்புள்ளது என்றால் சரிதான்.”

(iii) If the hanging had been ante-mortem, it is consistent with the theory of suicide. It is not the case of the prosecution as could be seen from the charge that the appellant had hung the deceased even while she was alive, though a faint attempt was made by the learned Public Prosecutor [Puducherry] to persuade us to believe that the appellant did so, by reading the confession, which is of no value.

(iv) It is the case of the witnesses who had first seen the deceased in her house that she was found hanging with a saree around her neck and a rope attached to it. In fact, the very complaint suggests that the deceased



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died due to hanging and therefore, it was registered only under Section 174 Cr.P.C. Hence, in the absence of any other definite evidence that the deceased suffered a homicidal death, it is highly unsafe to hold so.

(v) Consequently, the offence under Section 302 IPC has not been proved by the prosecution.

8. As regards the offence under Section 382 of the IPC, the circumstances relied upon by the prosecution for proving the charge of murder, are sought to be relied upon for this offence as well. It is necessary to examine the circumstances even though the prosecution had not proved murder or attack by the appellant, to ascertain if any other offence such as theft is made out.

9 (i) The motive according to the prosecution is that the appellant was running a chit business and suffered a loss as a result of which she was in huge debts; that she found the victim to be an easy target as she was an old lady living alone. The above aspects are sought to be established through the evidence of PW4 and PW5, who are employed in the panchayat.



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(ii) According to PW4 and PW5, the panchayat had received a number of complaints from the creditors and when questioned, the appellant had agreed to discharge the loan. PW4, in his deposition had stated that the appellant came to the Panchayat office on 02.07.2015 and paid a sum of Rs.80,000/-. PW5, who was also employed with the Panchayat, would corroborate the evidence of PW4 and confirm the fact that the appellant paid Rs.80,000/- to the Panchayat on 02.07.2015. He would further add that four or five days later, the police enquired about the payment made by the appellant and directed him to hand over the cash received from the appellant. According to him, he had handed over the cash to the police in the presence of two or three other panchayat members. However, the investigating officer [PW15] would state that the police had not seized the cash of Rs.80,000/-. PW14, who conducted the initial investigation, also confirms that he had not seized Rs.80,000/-.

(iii) Both witnesses viz., PW4 and PW5, would state that the Panchayat resolutions would be recorded in a register; that if any complaint is received by the panchayat, it would be noted by a functionary in the

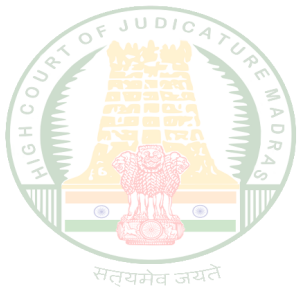


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panchayat [Kudipillai]; that one Thanigaivel was the Kudipillai; and that they were not personally aware as to whether the details of the complaint were recorded in the register. They would further add that the police had not seized any of the registers containing the resolutions or the complaints received from the panchayat office. The investigating officers, for reasons best known to them, have not examined the creditors who are said to have given a complaint to the panchayat.

(iv) Though the witnesses would state that a sum of Rs.80,000/- was seized, both the investigating officers deny the said fact. No complaint book or register which is alleged to be maintained at the panchayat office has been seized. Further, the person who had allegedly recorded/made entries in the register relating to complaints before the Panchayat, viz., Kudipillai, has also not been examined. Therefore, it would be highly unsafe to believe PW4 and PW5 as regards their version that the appellant had debts and she had paid a sum of Rs.80,000/- on 02.07.2015 in the panchayat.

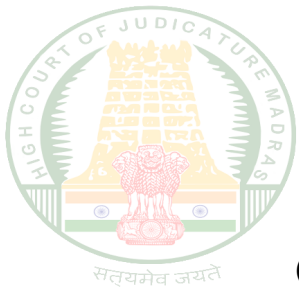
(v) Hence, this Court is of the view that the prosecution has failed to establish that the appellant had huge debts; that there were several



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complaints against her before the panchayat; and that she had paid Rs.80,000/- on 02.07.2015 after the alleged occurrence. Since the above aspects have not been established, the motive suggested by the prosecution fails.

10. (i) As regards the circumstance of the appellant last seen with the deceased, the prosecution has relied upon the evidence of PW6, who has stated that the appellant was regularly visiting the house of the deceased and was helping her domestically, as the deceased was living alone and that she had seen the appellant with the deceased on 28.06.2015 at 10.00 p.m. Since the appellant was in the habit of visiting the deceased regularly, nothing adverse can be inferred from the evidence of PW6 and this circumstance of last seen together, would not assume any significance. That apart, PW1 in his complaint had stated that one Theivanai (not examined) told him that she saw the deceased sitting outside the house at 10.00 p.m. on 28.06.2015. There is no reference to the presence of the appellant along with the deceased at that time. This version is contrary to PW6's version.



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(ii) Incidentally, the witnesses have also said that one Anjappar (not examined), who is a fisherman and related to the deceased, was also in the habit of visiting the deceased regularly and was helpful in getting her the Old Age Pension and that he was absconding for a period of one week. Further, the said Theivanai, who is said to have last seen the deceased on 28.06.2015, also used to visit the deceased regularly. As stated above, for the reasons best known to the prosecution, both Anjappar and Theivanai, were not examined at all. Therefore, this Court is of the view that the circumstance relied upon by the prosecution would be of no avail to establish their case.

11. (i) The prosecution seeks to rely upon the circumstances of the recovery of gold jewels on the confession of the appellant. It is the case of the prosecution that the appellant had pledged one gold jewel in Veerabadra Benefit Fund, in which PW8 was working as a Manager and that the said gold jewel weighed 15.900 gms and the appellant obtained a loan of Rs.24,000/-. Ex.P5 is the document which is sought to be recovered on the confession of the appellant from her residence. The said document is a card in which there are entries with regard to the details of the payment made to



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one M.Valarmathi on 30.06.2015. In the said document, there is no signature of the appellant. The person said to have been employed in the Benefit Fund and initialled in Ex.P5 has not been examined by the prosecution. There is no explanation offered by the prosecution as to why he was not examined.

(ii) Be that as it may, PW8 admits that the Benefit Fund would have corresponding entries in their register. Strangely, the investigating officer had not chosen to seize any of the documents, which is alleged to have been contemporaneously maintained at the office of the Benefit Fund to establish that the appellant had pledged the jewels. It is strange that no document which was signed by the appellant was seized by the investigating officer from the Benefit Fund.

(iii) Further, PW8 had allegedly identified the appellant when the police brought the appellant to the Benefit Fund. It is not the case of the prosecution that PW8 was known to the appellant. It is needless to say that such identification in the presence of police in the absence of any Test Identification Parade, would have no significance. Therefore, we cannot



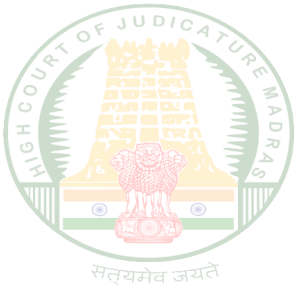
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give any credence to this document i.e., Ex.P5 and to the evidence of PW8, who admittedly did not make entries in Ex.P5.

(iv) The other recovery is said to have been made from PW9 to whom the appellant is said to have sold two pieces of gold jewellery weighing 3½ sovereigns. According to PW9, the appellant came to him first on 30.06.2015 at about 3.00 p.m. and wanted to sell two gold chains and a pair of ear-studs; that thereafter, she came back again at 5.00 p.m. and sold one gold chain and a pair of ear-studs weighing 3½ sovereigns; and that PW9 had paid Rs.51,000/-. Here again, no contemporaneous document has been produced by PW9 to prove the sale of gold jewels.

(v) Be that as it may, it is also in evidence that the gold jewels seized from PW9 were polished and new. This also raises a doubt. Though the trial Court seems to justify this by holding that PW9 could have polished, in the absence of any evidence, this Court is unable to accept the same.

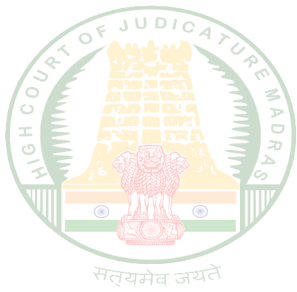
(vi) It is also pertinent to mention at this juncture that the deceased was living alone as her husband passed away 30 years ago and her only son also passed away 20 years ago.



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(vii) When the complaint was lodged by the nephew of the deceased, there was absolutely no reference to any of the missing jewels. It is highly improbable that the relatives had not noted the missing jewels, especially when the death was unnatural. Apart from the evidence of PW1 that the jewels recovered were those of the deceased and he is said to have identified the same at the police station, no other evidence has been let in by the prosecution to show that the jewels belonged to the deceased. Under normal circumstances, we would not have doubted the identification of the jewels by a close relative. However, in the absence of any complaint with regard to the theft, especially when the death was unnatural, the admitted case being PW1 was aware that his aunt always wore two gold chains and ear-studs and he had not stated so in his complaint, we find it hard to believe the version of PW1 that the jewels belonged to the deceased. The relevant portion from the cross-examination of PW1, reads as follows:

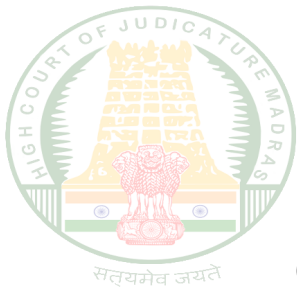
“புகாரில் எனது அத்தை கழுத்தில் தங்க செயினும் காதுகளில் தோடுகளும் (சாபொ 4 முதல் 6) எப்போதும் அணிந்திருப்பார்கள் என்று கூறவில்லை என்றால் சரிதான். புகாரில் மேற்படி நகைகள் காணாமல் போனதாகவோ, திருட்டு போனதாகவோ நான் கூறவில்லை என்றால் சரிதான்.”



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12. (i) The other circumstance that is sought to be established by the prosecution is that the appellant had tried to divert the police by throwing cigarette butts and matchbox at the scene of occurrence and that she had purchased cigarettes from PW7.

(ii) At the outset, on a reading of the evidence of PW7, we may point out that the same appears to be highly artificial. PW7 had gone to the extent of identifying the empty cigarette box, which has been allegedly seized from the scene of occurrence, as that purchased from his shop. This artificiality in his evidence suggests that he is not a reliable witness. Further, we find that there is a contradiction in his evidence i.e., in the chief examination, he had stated that the cigarette packet was purchased on 28.06.2015 at 10.00 p.m., whereas, in his cross-examination, he had stated that the cigarette packet was purchased bought on 29.06.2015 at 10.00 p.m. He is also said to have identified the appellant in the presence of the police. It is not the case of the prosecution that the appellant was known to PW7 already. No Test Identification Parade was conducted. Hence, the prosecution case that the appellant purchased cigarettes from the shop of PW7 prior to the occurrence cannot be believed.

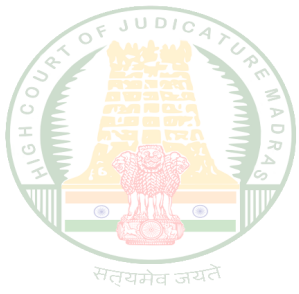


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(iii). Further, the seizure mahazar [Ex.P4], by which the cigarette and other objects were seized from the place of occurrence on 29.06.2015, had reached the Magistrate along with the objects only on 10.07.2015. The inquest report [Ex.P13] that is said to have been prepared on 29.06.2015, immediately after the occurrence, was also sent to the Magistrate only on 08.07.2015.

13. We are unable to countenance the submission of the learned Public Prosecutor [Puducherry] that there is no reason to falsely implicate the appellant/accused. The law in this regard is well settled. The burden is always on the prosecution to establish the case and it is not for the accused to explain or establish as to why he was prosecuted.

14. From the foregoing discussions, we are of the view that the prosecution has failed to establish that the death was homicidal, besides the circumstances relied upon by them, viz., motive, last seen theory, recovery, and the fact that the jewels belonged to the deceased. Hence, the impugned judgment cannot be sustained. The appellant is entitled to acquittal.



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15. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant/accused vide judgment dated 06.11.2019 in S.C.No.07 of 2018, on the file of the learned District and Sessions Judge, Karaikal, are set aside. The appellant/accused is, acquitted of the charge. The fine amount, if any, paid by the appellant/accused shall be refunded. Bail bond, if any, executed shall stand discharged.

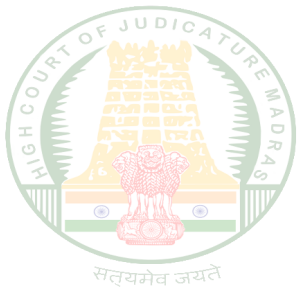
(A.S.M.,J.) (S.M.,J.)
16-07-2026

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

ars

To

1. The District and Sessions Judge,
Karaikal.
2. The Inspector of Police,
Town Police Station,
Karaikal, Pudhucherry.
3. The Public Prosecutor,
Puducherry.



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CRL A No.789 of 2019

**DR.ANITA SUMANTH, J.
AND
SUNDER MOHAN, J.**

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**Pre-delivery Judgment in
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