



Crl. A(MD)No.162 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.06.2026

CORAM:

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

AND

THE HONOURABLE Mr. JUSTICE K.K.RAMAKRISHNAN

Crl. A. (MD)No.162 of 2024

Sadaiyandi

.. Appellant/sole accused

Vs.

The State rep. by
The Inspector of Police,
Thevaram Police Station,
Theni District
Crime No.226/2018

..Respondent/Complainant

Appeals filed under Section 374(2) of Criminal Procedure Code,
against the judgment and order dated 24.01.2024 in S.C.No.59 of 2019 on
the file of the Additional District Judge, (Fast Track Court), Theni.

For Appellant
For Respondent

: Mr.R.Mariappan
: Mr.T.Leninkumar
Counsel for State



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JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH, J)

The appellant has assailed the judgment passed by the Additional District, FTC, Theni in SC No.59/2019 dated 24.01.2024 convicting and sentencing the appellant in the following manner:

Offences for which convicted (IPC)	Sentenced to undergo
302	Life imprisonment and to pay a fine of Rs. 5,000/-, in default, to undergo simple imprisonment for two months
380	Seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for two months

The sentences are ordered to run concurrently.

2. The case of the prosecution is that the deceased used to work in Kerala as a daily wage labour. The appellant used to pick up daily wage workers in a Jeep while transporting them to Kerala thereby the deceased got acquainted with the appellant. Taking advantage of this relationship, in the year 2010, the appellant borrowed a sum of Rs.40,000/- from the deceased and executed a promissory note to repay back the amount with

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interest. The appellant did not repay the said amount in spite of the repeated demand and request made by the deceased. It is alleged that the appellant started threatening the deceased and therefore, there was animosity between the appellant and the deceased. It is alleged that between 03.08.2018 and 05.08.2018, the deceased was alone in the house and the appellant went to the house of the deceased and there was a quarrel, since the appellant refused to repay back the money. The appellant is said to have assaulted the deceased with hands and dashed her head in the iron cot. He thereafter strangled and suffocated the deceased with a pillow on the face. The same resulted in the demise of the deceased. Thereafter the appellant is said to have stolen gold chains, ear rings and other gold ornaments weighing 69.500 gms.

2.1. On 05.08.2018, when PW1, who is the sister of the deceased, went to the house of the deceased, the house was locked from outside and there was no sound of the deceased. Hence, with the help of PW2, who is the brother-in-law of the deceased and PW3, who is also a relative, the lock was dismantled with axa-blade (MO2) and on opening the door, they saw



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WEB COPY the deceased lying in a pool of blood.

3. PW1 gave a complaint (Ex.P1) to the Inspector of Police, Thevaram Police Station, based on which, an FIR in Crime No.226/2018 (Ex.P15) was registered for offence under Section 302 IPC.

4. The investigation was taken over by PW16 and she went to the scene of crime and prepared the observation mahazar (Ex.P16) and rough sketch (Ex.P17). She also recovered MO1, MO2, MO4, MO12 to MO15 from the scene of crime under recovery mahazar (Ex.P18). The inquest was made on the dead body of the deceased and the inquest report was prepared (Ex.P19) in the presence of the panchayatdars. The dead body was sent for postmortem and the postmortem was conducted by the Doctor PW15, who prepared the postmortem report Ex.P13, in which, the following injuries were recorded:

“The following ante mortem injuries were noted over the body:

1.Laceration of size 1 cms x 0.75 cm x 0.5 cm seen on



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2.Laceration of size 2 cms x 1 cm x 1 cm seen on right eyebrow.

3.Black coloured contusion of size 30 cms x 22 cms seen over the both side front of chest.

4.Black coloured contusion of size 10 cms x 6 cms seen on front and sides of the neck.

5.Black coloured contusion of size 5 cms x 4 cms seen on back of neck.

6.On bloodless dissection of the neck:

Extravassation of blood with clots noted over the underlying neck muscles. Larynx and trachea – contain bloodstained mucous; the fracture of left side greater horn of hyoid bone and both superior horns of thyroid cartilage with bruise of surrounding tissues were noted.”

5. The final opinion (Ex.P14) was given to the effect that the deceased would appear to have died of mechanical asphyxia due to combined effect of a compression of effect by ligature and compression of nose by smothering.



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WEB COPY 6. PW16 altered FIR under Ex.P20 by including the offence under Section 380 IPC. On 07.08.2018, the accused person was arrested in the presence of witnesses and based on the admissible portion of his confession, a sum of Rs.20,000/- was recovered from the accused person under Athatchi Ex.P8. That apart, in the house of the accused, golden jewelry and a key (MO8 and MO11) were seized under Athatchi Ex.P9. A further sum of Rs. 10,000/- was recovered from one Eswaran under Athatchi Ex.P10 and gold jewelry MO5 to MO7 and MO10 were seized under Athatchi Ex.P11 from ICICI Bank, where they were pledged. The accused person was produced before the Court and he was remanded to judicial custody.

7. The Investigating Officer recorded the statements of the witnesses under Section 161(3) Cr.P.C. and sent the material objects to the Court with a requisition to send them to the forensic laboratory.

8. The investigation was thereafter taken over by PW17, who recorded the statements of the remaining witnesses and he collected all the relevant reports (Ex.P22 to Ex.P24).



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WEB COPY 9. On completion of investigation, the police report was filed before the learned Judicial Magistrate, Bodi, which was taken on file in PRC No. 25/2018. The committal Court served the copies to the accused person under Section 207 Cr.P.C. and committed the case under Section 209 Cr.P.C., and it was made over to the file of the Additional Sessions Court. It was taken on file in SC No.59/2019.

10. The trial Court framed the charges for offence under Sections 302 and 380 IPC and when questioned, the accused person denied the charges.

11. The prosecution examined PW1 to PW17 and marked Ex.P1 to Ex.P24 and further relied upon MO1 to MO17.

12. The incriminating circumstances and evidence were put to the accused person by the trial Court while questioning him under Section 313(i)(b) of Cr.P.C., and he denied the same as false.

13. The accused person did not examine any witness nor relied upon any documents.



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WEB COPY 14. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and accordingly convicted and sentenced the accused person in the manner stated supra. Aggrieved by the same, the present appeal has been filed before this Court.

15. This Court heard the learned counsel for the appellant and the learned counsel for the State and carefully perused the materials available on record.

16. The entire case of the prosecution hinges upon circumstantial evidence. It is now too well settled that the prosecution has to prove every circumstance and each circumstance must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused. In the case in hand, the only two circumstances, upon which the prosecution is placing heavy reliance, are,

(a) motive and (b) Confession and recovery.



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WEB COPY 17. Insofar as the motive is concerned, the evidence of PW1 is relied upon. PW1, who is the sister of the deceased, states that the accused person had borrowed a sum of Rs.40,000/- from the deceased and did not repay back the money and since the deceased was insisting for the repayment of the money, he had a motive to do away with the deceased.

18. In the considered view of this Court, this evidence of PW1 at the best talks about the loan transaction between the deceased and the accused person and even taking the evidence of PW1 as it is, it does not prove a strong motive for the accused person to commit the said crime.

19. Even insofar as the trial Court is concerned, a categorical finding has been given at Paragraph No.33 of the judgment to the effect that the only circumstance that has been relied upon is the recovery that was made pursuant to the confession made by the accused person.

20. In view of the above, this Court has to see whether the alleged recovery made by the investigating officer substantiates the case of the

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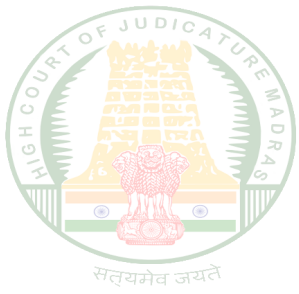
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prosecution to prove the charge of murder and theft.

21. The accused person is said to have arrested by PW16 on 07.08.2018 at about 6.00 a.m. The arrest was made in the presence of the witness PW8, who is the Village Administrative Officer. The accused person is said to have voluntarily made a confession and the admissible portion of the confession, which allegedly lead to the discovery of the fact, has been marked as Ex.P7. For proper appreciation, the marked portion is extracted hereunder:

“என்னை அழைத்து சென்றால் நான் சரணமணியை கொலை செய்து அவளது வீட்டில் திருடிய நகைகளில் பேங்கில் அடகு வைத்தது போக மீதமுள்ள நகைகளையும் சரணமணி வீட்டு வெளிப்பூட்டு சாவியையும் சங்கராபுரம் ICICI பேங்கில் அடகு வைத்த நகைகளையும் நான் கடன் செலுத்திய ஈஸ்வரன் என்பவருக்கு கொடுத்த பணத்தையும் எடுத்தும் வாங்கியும் ஆஜர் செய்கின்றேன். நான் படிக்கக் கேட்டேன். நான் சொன்னபடி சரியாக உள்ளது.□

22. The confession made to the police is inadmissible in evidence and the only exception that has been carved out of Sections 25 and 26 of the Indian Evidence Act is Section 27, which makes it clear that such



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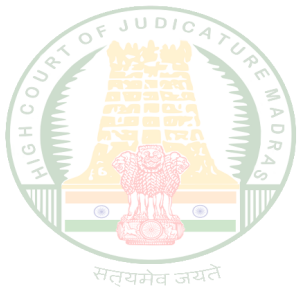
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confession becomes admissible to the extent that it leads to discovery of a fact. This Court will keep in its mind the celebrated judgment of the Privy Council in ***Pulukuri Kotayya and others v. King Emperor*** reported in ***AIR 1947 PC 67***. The Apex Court in a recent judgment has further held that the law expects an investigating officer to draw panchanama under Section 27 of the Evidence Act, failing which the recovery will not be believed. Useful reference can be made to the judgment made in ***Babu v. State of Kerala*** reported in ***2023 (1) MWN (Crl.) 321***.

23. Insofar as recovery is concerned, this Court will carefully go through the evidence of PW8 to PW11 and PW16 considered along with Ex.P8 to Ex.P11.

24. Immediately after the arrest of the accused person, based on the confession, four sets of recoveries are alleged to have been made by the investigating officer.

25. The first recovery is a sum of Rs.20,000/- from the accused



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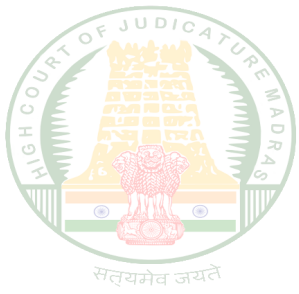
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person. The Athatchi marked as Ex.P8 is relied upon. It has been recorded that the amount was given by the accused person from his possession and it is stated that 10 numbers of Rs.2,000/- notes were handed over by the accused to the Investigating Officer in the presence of witnesses.

26. One of the witness has been examined as PW8. He states that the accused handed over the amount from his pocket. The investigating officer (PW16) states that he handed over the amount from the dhoti in which it was rolled and kept. There is a minor discrepancy with respect to the manner in which Rs.20,000/- was handed over by the accused person to the investigating officer.

27. The next set of recovery is said to have taken place in the house of the accused person. In the Athatchi marked as Ex.P9, it is stated that MO9, which is 24.300 gms of gold jewelry, MO10, which is 4.210 gms of gold jewelry and MO11 key were recovered in the presence of witnesses. PW8, who is one of the witness, states that three sovereigns of gold jewelry, which includes a haram and necklace was recovered apart from a key. The

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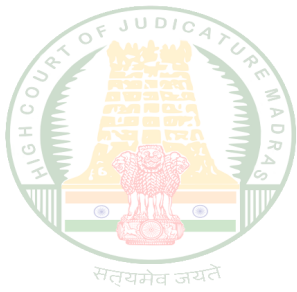
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investigating officer (PW16) states that the haram, necklace and key were kept on the backside of a mirror. Admittedly, the jewelry that was recovered was not identified as that of the deceased.

28. The third set of recovery was a sum of Rs.10,000/- under Athatchi Ex.P10 from one Eswaran (PW9). As per the Athatchi what was recovered was five numbers of Rs.2,000/- notes.

29. PW8 in his evidence states that the sum of Rs.10,000 was recovered from one Eswaran. Eswaran, who was examined, as PW9 states that the accused person had borrowed a sum of Rs.10,000/- and did not return back the money and the accused person ultimately returned back the amount through one Thangaraj (PW12) and what was recovered from him was 20 numbers of Rs.500 notes.

30. PW12, who is said to have paid the money to PW9 denied this fact and therefore, he was treated as a hostile witness.



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31. The investigating officer (PW16) states that Rs.10,000/- was received from Eswaran, which in turn was paid by Thangaraj and this amount is said to have been paid by the accused person from the amount received by him after pledging the jewels stolen from the deceased.

32. On a careful consideration of the evidence, there is a serious doubt in the recovery itself since PW12 did not support the case of the prosecution and the amount of Rs.10,000/- as is described under Ex.P8 is completely contrary to what was stated by Eswaran (PW9) as 20 numbers of Rs.500 notes.

33. The above three recoveries does not have a direct nexus to the alleged crime and therefore those recoveries will not be very relevant to prove the case of the prosecution.

34. The fourth set of recovery alone is the most relevant recovery, which will have a bearing on the case of the prosecution.



35. The 4th recovery made under Athatchi marked as Ex.P11 are

“(I) சுமார் 4.210 கிராம் எடையுள்ள மேலே சிவப்பு நடுவில் பச்சை கீழே சிவப்புகல் பதித்த தங்க தோடு ஒரு ஜோடி.

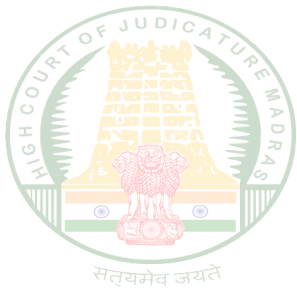
(II) சுமார் 4.020 கிராம் எடையுள்ள தங்க மாட்டல் ஒரு ஜோடி.

(III) சுமார் 2.090 கிராம் எடையுள்ள மயில் வடிவ தங்க தோடு ஒரு ஜோடி.

(IV) சுமார் 11.590 கிராம் எடையுள்ள கோதுமை மாடல் தங்க செயின் ஒன்று.□

36. The specific case of the prosecution is that the above gold jewels were stolen and pledged by the accused person with the ICICI bank and he had received a sum of Rs.30,000/-. This recovery was made from PW11, who was working as the Assistant Manager at ICICI, Sankarapuram Branch.

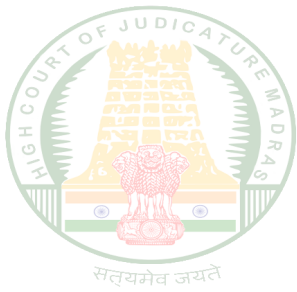
37. PW8, who is a witness to the Athatchi, states that the gold jewelry was recovered from the Manager of ICICI Bank.



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38. PW10, who was working as a Cashier of ICICI bank, is an important witness since he is said to have received the jewels and paid the sum of Rs.30,000/- to the accused person. PW10 in his evidence states that he was working as a Cashier and the accused person is a regular customer in their branch. On 06.08.2018, the accused person came to the bank and stated that he needs urgent money and hence, he wants to pledge four items of gold jewelry. PW10 immediately called his Manager over phone and he permitted PW10 to receive the jewels and pay the money. Accordingly, four numbers of gold jewelry was received and a sum of Rs.30,000/- was paid to the accused person. Surprisingly, PW10 says that he only handed over the jewels to the police, whereas, PW10 has not signed the Athatchi. During cross-examination, PW10 was not able to produce any document to substantiate that the accused was a regular customer nor PW10 was able to produce any document to prove the so called pledging of jewelry and payment of a sum of Rs.30,000/-. He further states in the cross-examination that he will not be able to identify the jewelry and he admits that in spite of the non repayment of the money, the bank did not take any steps to recover



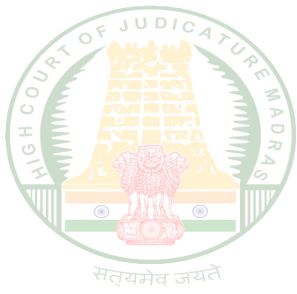
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WEB COPY the money by selling the gold jewelry.

39. PW11 was working as the Assistant Manager in the same Branch. He states that he permitted PW10 to pay the money on the jewelry being pledged by the accused person. He specifically states that he handed over the CCTV footage to the police to establish the fact that the accused person in fact visited the bank for pledging the jewelry. Curiously he further states that he only handed over the gold jewelry to the police. While making this statement, he does not anywhere state about the presence of PW10, who also says that he handed over the jewelry to the investigating officer.

40. In the cross-examination, PW11 has admitted that he did not hand over any documents to substantiate that the jewels were pledged and the money was paid to the accused person.

41. The Investigating Officer (PW16) does not really clarify from whom the four items of jewelry (MO5, MO6, MO7 and MO10) were recovered.



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42. On a combined reading of the evidence of PW8, PW10, PW11 and PW16 along with Athatchi Ex.P11, the following serious discrepancies can be ascertained and they are:

(a) There is no material to substantiate that the accused was a regular customer of ICICI bank, Sankarapuram branch;

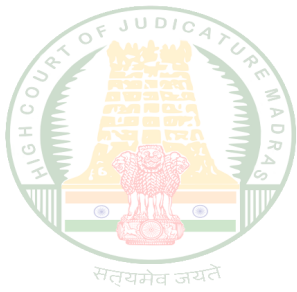
(b) There is no material to substantiate that the jewelry was pledged by the accused person to PW10 since no document was marked;

(c) There is no material to substantiate that PW10 paid a sum of Rs.30,000/- to the accused person since no document was marked;

(d) The CCTV footage is said to have been handed over to the investigating officer and the same has not even been brought on record by the investigating officer to prove that the accused person visited the bank;

(e) PW10 states that he will not be able to identify the gold jewelry that was pledged, but, however, he states that he handed over the jewelry to the investigating officer. If this statement is true, it is not known as to why his signature was not found in Ex.P11;

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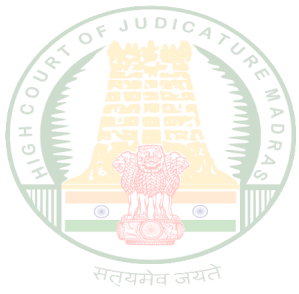
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(f) PW11, who was the Assistant Manager states that he handed over the jewelry to the investigating officer. If that is the case, he would have mentioned about the presence of PW10 since PW10 is also claiming that he handed over the jewelry. However, no such statement is forthcoming and it is not even clear as to who actually handed over the jewels to the police;

(g) After the alleged recovery of jewelry, the investigating officer did not even attempt to show the jewelry to PW1 to PW3 to confirm as to whether it belongs to the deceased. For the first time, PW1 to PW2 identify the jewelry in the Court and the same is unbelievable. Without even confirming as to whether the jewelry actually belongs to the deceased, the investigating officer assumes that those jewelry belong to the deceased; and

(h) Institution that is involved is ICICI bank and not a private player and therefore, if really jewelry was pledged and the amount was paid, necessary document would have been maintained by the bank and for some strange reasons, none of those documents have been placed by the prosecution before the Court.



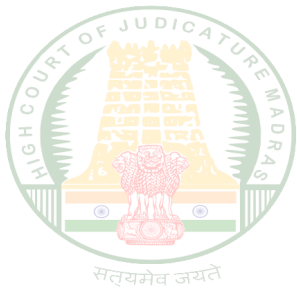
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43. There are overwhelming discrepancies in the recovery story that has been projected by the prosecution. In other words, the prosecution has not proved the recovery, which is the only circumstance that has been strongly relied upon by the prosecution to substantiate the charge against the accused person.

44. The trial Court was swayed by the recovery, but, however, failed to appreciate the evidence in a proper perspective and the trial Court has proceeded to convict and sentence the accused person on mere assumptions and surmises.

45. In the light of the above discussion, this Court holds that the prosecution has miserably failed to prove the case against the accused person beyond reasonable doubts. Hence, the judgment of the trial Court in is liable to be set aside and accordingly, set aside.



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WEB COPY 46. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No.59 of 2019 on the file of the Additional District Judge, (Fast Track Court), Theni is hereby set aside and the appellant is acquitted of all the charges and he is set at liberty forthwith unless his presence is required in connection with any other case. Fine amount, if any, shall be refunded.

[N.A.V, J.] & [K.K.R.K, J.]
03.06.2026

NCC : Yes/No

Index : Yes/No

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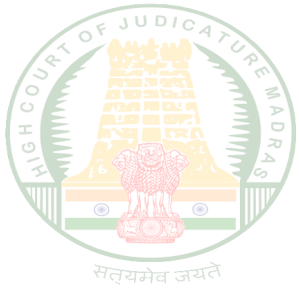
To

1.The Additional District Judge, (Fast Track Court), Theni

2.The Inspector of Police,
Thevaram Police Station,
Theni District.

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

4.The Section officer (English Records)
Madurai Bench of Madras High Court,
Madurai.



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**N.ANAND VENKATESH, J
AND
K.K.RAMAKRISHNAN, J.**

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**Judgment made in
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