

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30-11-2015

Coram

The Honourable Mr.Justice R.SUDHAKAR
and
The Honourable Mr.Justice P.N.PRAKASH

Criminal Appeal No.823 of 2012

Sakthikumar

...

Appellant/Accused

Vs.

State, represented by
Inspector of Police,
Natrampalli Police Station,
Vellore
(Crime No.155 of 2010)

...

Respondent

This Criminal Appeal has been filed under Section 374(2) of Code of Criminal Procedure, questioning the conviction and sentence imposed by the learned Additional District and Sessions Judge, F.T.C., Tirupathur in S.C.No.52 of 2011 dated 15.12.2011.

For Appellant : Mr.C.D.Johnson
(Legal Aid Counsel)

For Respondent : Mr.V.M.R.Rajendran
Additional Public Prosecutor

Reserved on	Pronounced on
16-11-2015	30-11-2015

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P.N.PRAKASH, J.

This Criminal Appeal is preferred by the Appellant/accused against the conviction and sentence imposed by the learned Additional District and Sessions Judge, Tirupathur by Judgment dated 15.12.2011 in S.C.No.52 of 2011.

2. The charges under which the Appellant/accused was convicted and sentenced are as follows:

Charge u/s.	Conviction & Sentence
449 IPC	Rigorous Imprisonment for Three years, and to pay a fine of Rs.1,000/-, i/d to undergo Rigorous Imprisonment for Six months.
302 IPC	Life Imprisonment and to pay a fine of Rs.1,000/-, i/d to undergo Rigorous Imprisonment for Six months.
379 IPC	Rigorous Imprisonment for Two years and to pay a fine of Rs.1,000/-, i/d to undergo Rigorous Imprisonment for Six months.

The above sentences were ordered to run concurrently.

3. The case of the prosecution as could be seen from the materials on record are as follows:

(a) The deceased Samathal, who was aged about 85 years, was living alone in her village house. Her children Settu (PW-1), Ramakrishnan (PW-2), Raji (PW-4) and Tamilselvan (PW-5), are living separately in and around her house.

(b) On 19.3.2010, Settu (PW-1) and his family members left their house for shopping at 3.30 p.m., after bidding farewell to his Mother and they returned home after dusk. Finding that the lights in his Mother's house was not on for quite some time, he went to her house and found the door open.

(c) Settu (PW-1) entered the house and switched on the lights and was shocked to find the body of his Mother on the floor, smothered by sacks of groundnut and rice. He removed the sacks and found his Mother dead. He also found his Mother's right Nose Ring and Pair of Ear Rings, missing. He informed his Brothers living nearby and also lodged a complaint (Ex.P-1).

(d) Based on the complaint (Ex.P-1), Malar, Sub-Inspector of Police (PW-18) registered the FIR (Ex.P-21) at 8.00 p.m. on 19.3.2010, which was received by the jurisdictional Magistrate at 8.00 a.m. on 20.3.2010, as could be seen from the endorsement therein.

(e) The investigation of the case was taken over by Srinivasan, Inspector of Police (PW-19), who went to the spot around 9.00 p.m. on 19.3.2010 and in the presence of witnesses Samundi and Arumugam (PW-6), prepared the Observation Mahazar (Ex.P-2) and Rough Sketch (Ex.P-22). In the presence of the same witnesses, the Inspector of Police (PW-19) recovered Blood stained Earth (MO-3), Sample Earth without Blood Stain (MO-4) and a Green colour Wire (MO-5) under the cover of Mahazar (Ex.P-3). PW-19 arranged for taking photographs of the place of occurrence by Prakasam (PW-11), who took photographs of the Scene of Occurrence, which were marked as Ex.P-9 Series. The Investigating Officer also made arrangements for bringing the Finger Print Expert to

search for the availability of Finger Prints, but in vain. He recorded the statements of Settu (PW-1), Ramakrishnan (PW-2), Kanchana (PW-3), Arumugam (PW-6) and other witnesses. The body of the deceased was despatched to the mortuary at the Government Hospital, Tirupattur for further proceedings.

(f) On 20.3.2010 in the presence of Panchayatdars PW-19 conducted inquest over the body of the deceased from 8.00 a.m. to 10.00 a.m. and the Inquest Report was marked as Ex.P-23. Thereafter he made a request to the hospital authorities for conducting Postmortem over the body of the deceased.

(g) Dr.Kumaravel (PW-14) conducted Postmortem and the Postmortem report was marked as Ex.P-13. Dr.Kumaravel (PW-14) in his evidence and Postmortem Report (Ex.P-13) has noted blood oozing from the head, a cut injury on the left portion of the head, and some abrasions in the right hand. The autopsy revealed a fracture in the left portion of the skull and also found blood clot on the rear side of the brain. There was a cut injury measuring 2 x 8 cm on the left side of the neck. PW-14 sent the stomach contents, intestine contents and other preservatives to the Tamil Nadu Forensic Science Department for examination of viscera and after obtaining Viscera Report (Ex.P-10), he opined that the death was due to loss of blood and shock on account of the head injury suffered by the deceased Samathal.

(h) Srinivasan (PW-19) proceeded further with the investigation and arrested the Appellant/accused at 8.00 p.m. on 20.3.2010 and recorded his confession statement in the presence of witnesses Udayakumar (PW-7) and Madan (PW-16). At the time of arrest, a sum of Rs.3,350/- (MO-7) in the possession of the Appellant/accused was recovered under the cover of Mahazar (Ex.P-7).

(i) On 20.3.2010 the Investigating Officer (PW-19) received, (i) Rose Colour Blouse (MO-12); (ii) Inskirt (MO-13); (iii) Saree (MO-14), that were found on the body of the deceased, and sent by the Autopsy Doctor (PW-14) through R.Senthilkumar, Gr.I Police Constable. These items were received under Special Report (Ex.P-25). The body of the deceased was handed over to her relatives by R.Senthilkumar, Gr.I Police Constable on 20.3.2010.

(j) On 21.3.2010 at 9.00 hours, the Investigating Officer (PW-19) was taken by the Appellant/accused to the shop of Manohar Chand Jain (PW-9), a Pawn Broker with whom the Appellant/accused had allegedly pawned the gold Nose Stud (MO-2) of the deceased and the same was seized under the cover of Mahazar (Ex.P-5) in the presence of Udayakumar (PW-7) and Madan (PW-16). On the disclosure made by the Appellant/accused, the Police seized a blood stained Aruvamanai (MO-6 - a sharp edged blade fixed in a wooden stand used for cutting vegetables) under the cover of Mahazar (Ex.P-6). Thereafter, the Appellant/accused took the Police party to his residence from where blood stained Full Hand Shirt (MO-8) and blood stained Pants (MO-9), allegedly worn by him at the time of commission of the offence were recovered. From the same place a Yellow colour Full Hand Shirt (MO-10) and Striped Pants (MO-11)

that were allegedly worn by the Appellant/accused after the occurrence were also recovered.

(k) On further disclosure allegedly made by the Appellant/accused, he took the Investigating Officer (PW-19) to the shop of Subash (PW-10), who is the Proprietor of Sri Champalal Pawn Broking Shop, from where a pair of gold Ear Rings (MO-1) was recovered under the cover of Mahazar (Ex.P-17) in the presence of Udayakumar (PW-7) and Madan (PW-16).

(l) The Investigating Officer (PW-19) sent the Appellant/accused to the Government Hospital, Tirupathur for an injury in his hand, where Dr.Sivakumar examined him at 8.10 p.m. on 21.3.2010 and noted an old abrasion measuring 1 x 1 cm in the right forearm, for which he made necessary entries in the Accident Register and the copy of Accident Register was marked as Ex.P-11. Thereafter the accused was produced before the jurisdictional Magistrate, who remanded him to judicial custody.

(m) On 22.3.2010 the recovered gold ornaments were shown to Settu (PW-1) and Tamilselvan (PW-5), the sons of the deceased Samathal for identification and their statements were recorded.

(n) The articles with blood stains that were seized by the Police and the apparels that were found on the body of the deceased were sent to the Tamil Nadu Forensic Department through Court for chemical examination and the Chemical Report (Ex.P-16) was marked through Jagannathan, Scientific Officer (PW-15). From the evidence of Jagannathan (PW-15) and his report Ex.P-16, it could be seen that human blood group 'B' was detected in Cement Mortar pieces (MO-3), Blouse (MO-12), Inskirt (MO-13), and Saree (MO-14). As regards the vegetable cutter (MO-6) and the dresses allegedly worn by the Appellant/accused at the time of incident viz., MO-8 and MO-9, the blood grouping test was found to be inconclusive.

(o) On the request made by the Inspector of Police (PW-19), Test Identification parade was conducted by Mr.Sivagnanam, Judicial Magistrate (PW-17) on 5.4.2010 at the Central Prison, Vellore, where the Appellant was identified by Ramakrishnan (PW-2), Kanchana (PW-3), Raji (PW-4) and Sureshkumar (Not examined). The Test Identification Parade Report was marked as Ex.P-20.

(p) The Investigating Officer (PW-19) examined further witnesses and after completing the investigation, filed the Final Report before the jurisdictional Magistrate against the Appellant/accused.

4. On appearance of the Appellant/accused, copies were furnished to him under Section 207 of Cr.P.C. and the case was committed to the Court of Sessions in S.C.No.52 of 2011, which was made over to the Additional Sessions Court, Tirupathur, where the aforesaid charges were framed, to which the appellant/accused pleaded not guilty.

5. On the side of the Prosecution, 19 witnesses were examined, 25 exhibits were marked, and 14 Material Objects were produced.

6. The Appellant/accused was questioned about the incriminating circumstances under Section 313 Cr.P.C. and his answers were recorded. No witness or document was marked on behalf of the Appellant/accused. After hearing both sides and analysing the evidence on record, the Trial Court convicted and sentenced the Appellant/accused, aggrieved by which the present appeal is preferred.

7. We have heard the learned Counsel appearing for the Appellant/accused and the learned Additional Public Prosecutor for the State.

8. This is a case of circumstantial evidence, inasmuch as there is no eye witness to the occurrence. Settu (PW-1), Ramakrishnan (PW-2), Raji (PW-4), Tamilselvan (PW-5) are sons of the deceased Samathal and Kanchana (PW-3) is the wife of Settu (PW-1) and daughter-in-law of deceased Samathal. According to the witnesses, the deceased Samathal was living alone and they were all living separately in and around.

9. On 19.3.2010, Settu (PW-1) saw his Mother before leaving the village for shopping with his family, and when he came back home after dusk, he noticed that the lights in his Mother's house was not on and when he went into her house, he found her dead. The Prosecution has proved beyond a pale of doubt that the death of Samathal was homicidal.

10. It is not the case of any of the witnesses that they had seen the occurrence. According to Ramakrishnan (PW-2), Kanchana (PW-3) and Raji (PW-4), they had seen the Appellant talking to the deceased near her house two days prior to the incident, and when they enquired they learnt that the Appellant had come for purchasing country eggs from the deceased, who is said to be rearing hens. It is nobody's case that they had seen the Appellant with the deceased in and around the time of occurrence, i.e., on 19.3.2010 evening. Only for this limited purpose, Test Identification Parade was conducted and therefore nothing substantial turns out from it.

11. The only incriminating material against the Appellant/accused is the alleged recovery of golden Nose Stud (MO-2) and Ear Rings (MO-1) based on the disclosure made by the Appellant. Settu (PW-1) in his complaint (Ex.P-1) has stated that he found a pair of Ear Rings (MO-1) and one Nose Stud (MO-2), worn by his Mother were missing. On a careful reading of the Complaint (Ex.P-1) it could be seen that the Tamil word "xU" has been inserted before the words "Nose Stud". PW-1 in the cross-examination candidly admitted that he had not written the complaint (Ex.P-1) and that he also does not know who had scribed it. In his evidence before the Court, Settu (PW-1) has stated that the

Nose stud from the right nose of his deceased Mother was found missing. On a perusal of the photographs (Ex.P-9 series) it can be seen that there was a Nose Stud in the right nose of the deceased, and that had not been removed. The photographs also show a gold chain around the neck of the deceased. Under such circumstances, the submission of Mr.C.D.Johnson, learned Counsel appearing for the Appellant/accused that, if it is a case of murder for gain as projected by the Prosecution, the murderer would not have left the gold chain and Nose Stud intact on the body of the deceased, is plausible. Neither the Observation Mahazar (Ex.P-2) nor the Inquest Report (Ex.P-23) speak a word about the Gold Chain and Nose Stud on the body of the deceased. From the Photograph Ex.P-9 Series, it is obvious that these ornaments were available on the body of the deceased, when Prakasam (PW-11) came to the scene of occurrence and took photographs (Ex.P-9 series). It is not the case of the prosecution that those ornaments were removed thereafter. Strangely, after the Postmortem only the clothes worn by the deceased were handed over to the Police under Ex.P-25. The Nose stud and the Gold Chain obviously did not go with the dead body for autopsy. Somewhere in the interregnum it has gone missing.

12. The next scene is, the Nose stud (MO-2) is said to have been recovered from the shop of Manohar Chand Jain (PW-9) at the instance of the Appellant in the presence of Udayakumar (PW-7) and Madan (PW-16). Manohar Chand Jain (PW-9) turned hostile to the prosecution case and denied the very seizure of the Nose Stud from his shop. It is the specific case of the prosecution that the Appellant in his confession statement disclosed that he had approached Saravanan (PW-8) for selling the Nose Stud (MO-2) and Saravanan (PW-8) took him to the shop of Manohar Chand Jain (PW-9) and sold the Nose Stud for Rs.800/-. Saravanan (PW-8) and Manohar Chand Jain (PW-9) both turned hostile. Of course, the recovery can be proved if the evidence of the recovery witnesses Udayakumar (PW-7) and Madan (PW-16) inspire the confidence of this Court. Udayakumar (PW-7), Village Administrative Officer and Madan (PW-16) were the only two witnesses who were available from the time of arrest of the Appellant/accused on 20.3.2010 till next day when all the recoveries were effected. Both Udayakumar (PW-7) and Madan (PW-16) in their evidence have stated that the Appellant/accused took the Police party to a pawn shop from where a Nose Stud and Ear Rings were recovered, whereas the Prosecution case is that the Nose stud (MO-2) was recovered from the shop of Manohar Chand Jain (PW-9) and the Ear rings (MO-1) was recovered from the shop of Subash (PW-10). Therefore, these two witnesses have failed to corroborate the evidence of the Investigating Officer (PW-19) on this aspect.

13. In view of the above, we are of the opinion that the Prosecution has failed to satisfactorily establish that the Nose Stud (MO-2) was taken away from the body of the deceased, and that

it was pawned by the Appellant/accused through Saravanan (PW-8), and that the same was recovered on 21.3.2010 on the disclosure made by the appellant/accused from the shop of Manohar Chand Jain (PW-9).

14. Coming to the next recovery viz., recovery of Ear rings (MO-1), it is the case of the Prosecution that the Appellant/accused had pawned it with Sri Champalal, owned by Subash (PW-10) on 20.3.2010 vide receipt (Ex.P-8). Subash (PW-10) in his evidence has stated that on 20.3.2010 the Appellant/accused came to his shop and pawned a pair of Ear rings for Rs.4,100/-, and that he had given a receipt (Ex.P-8) and on the very same day in the evening, the Police came with the Appellant/accused and handed over the receipt (Ex.P-8) and took back the pair of Ear rings (MO-1). It is the case of the Prosecution that the Appellant was arrested at 8.00 p.m. on 20.3.2010 and the recovery from the shop of Subash (PW-10) was effected only on 21.3.2010, whereas the evidence of Subash (PW-10) was that the recovery was effected on the evening of 20.3.2010 itself. That apart, the original Pledge receipt has been marked as Ex.P-8. There is no evidence to show how and from where the Police recovered the original receipt (Ex.P-8). At the time of arrest of the appellant/accused only cash was recovered and no receipt was recovered. Normally, the original receipt will be with the person who pawns the goods, because, only on production of the original receipt, the pawned article will be returned. Subash (PW-10) in his evidence has stated that the Police returned the receipt and took back the gold ornaments. But there is no evidence to show as to when and how the Police took back the receipt (Ex.P-8) from Subash (PW-10) for submitting with the Final Report. If the Prosecution had adduced evidence that they had seized the receipt (Ex.P-8) from the Appellant/accused and thereafter it was given to Subash (PW-10) for retrieving the gold ornaments, and after that the receipt was taken from Subash (PW-10) under the cover of Mahazar for the purpose of investigation, then it is a different question. Even if the Police had at least seized the receipt book containing the office copy of the receipt (Ex.P-8) from Subash (PW-10), then one can draw a reasonable inference in favour of the Prosecution on this aspect.

15. The evidence of the independent witnesses Udayakumar (PW-7) and Madan (PW-16) do not support the Prosecution case inasmuch as they have made a omnibus statement in their evidence that both the Nose Stud and Ear Rings were seized from one pawn shop, contrary to the case of the Prosecution that they were recovered from two different pawn shops. The Chemical Analysis Report (Ex.P-16) issued by the Scientific Officer (PW-15) is also of no assistance to the Prosecution case for linking the Appellant/accused with the alleged crime.

16. In fine, we find that the Prosecution has failed to prove the charges framed against the Appellant/accused. The Criminal

Appeal is allowed. The conviction and sentence imposed by the learned Additional District and Sessions Judge, Tirupathur, in S.C.No.52 of 2011 dated 15.12.2011 are set aside and the Appellant/accused is acquitted of all the charges. The Appellant/accused is directed to be released, if not required in any other case.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Additional District and Sessions Judge,
FTC, Tirupathur
2. The Inspector of Police, Natrampalli Police Station,
Vellore
3. The Superintendent of Police, Vellore.
4. The Superintendent of Central Prison, Vellore.
5. The Public Prosecutor, High Court, Madras.

1 cc to Mr.C.D. Johnson, Advocate, Sr. 65060

Crl.A.No.823 of 2012

VGI (CO)
kk 28/12

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