WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

Crl.A.(MD)No.255 of 2014

S.Karthick ... Appellant / Accused-1

Vs.

State rep. by
The Inspector of Police,
Vellianai Police Station,
Karur District.
Crime No.58 of 2012. ... Respondent/ Complainant

PRAYER: The Criminal Appeal is filed under Section 374(2)Cr.P.C praying to set aside the conviction and sentence passed against the appellant by the Learned Principal District Sessions Judge, Karur in S.C.No.8 of 2013 dated 19.12.2013 and acquit the appellant.

For Appellant : Mr. S.Mohandass, Advocate

For Respondent : Mr.R.Ramachandran
Additional Public Prosecutor

JUDGMENT

The appellant is the first accused in S.C.No.8 of 2013, on the file of the learned District Sessions Judge, Karur. He has been charged for the offences punishable under section 302, 379 and 201 I.P.C. By judgment dated 19.12.2013, the Lower Court convicted and sentenced the appellant to undergo Imprisonment for life and also to pay a fine of Rs.10,000/- in default to undergo 6 months rigorous imprisonment for the offence u/s.302 I.P.C., and for the second offence of u/s.379 I.P.C, convicted and sentenced to undergo rigorous imprisonment of 3 years and also to pay a fine of Rs.1,000/- in default to undergo for a period of 3 months, and for the third offence of 201 I.P.C., convicted and sentenced to undergo

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

rigorous imprisonment of 3 years and to pay a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment. As against, the said judgment, the appellant has come up with the present Criminal Appeal and he is, right now, in Central Prison, Trichy, undergoing the imprisonment.

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

P.W.1, Kanagaraj is the husband of deceased Malathy and the deceased Malathy and first accused, namely Karthick, the appellant herein have got illicit intimacy. The deceased Malathy has raised objection for the appellant getting married to some other lady. Due to that reason, enmity has arisen between the deceased Malathy and the appellant herein. On 20.03.2012 at 11.00A.M., Malathy has gone to Karur Manimekalai Hospital and also "Copper T" has been inserted in the body of the deceased on 20.03.2012 at 01.00P.M. Thereafter, at 06.00P.M., the deceased Malathy has decided to return to her place of residence. During that time, the appellant has taken the deceased Malathy to the pitch, near the quarry owned by the Chettinad Cement Factory in the eastern side of Kalappatti Village and brutally assaulted the deceased Malathy with the help of M.O.11, namely, the sharp edged stone and thus, murdered the deceased Malathy and also taken 5 ½ sovereigns of chain and steads and also cell phone of the deceased Malathy. Further, the appellant has also tied a stone to the dead body of the deceased Malathy and thrown the body with the stone tied to the body in the said pitch. Thereafter, on 23.03.2012, at 05.00 A.M, the body of the deceased Malathy has come up to the water level of the said pitch and thereafter the appellant has tried to erase the evidence of the murder.

3. In order to prove the case of the prosecution, the prosecution has examined 16 witnesses as P.W.1 to P.W.16 and also marked 30 exhibits as Ex.P.1 to Ex.P30 and also Material Objects as M.O.1 to M.O.14. Having considered all the materials on record, the Lower Court has convicted the appellant / first accused as stated above on 19.12.2013. As against which, the appellant has preferred the present appeal. Further, as per the orders passed by this Court on 12.03.2015, Additional Evidences of P.W.17 and P.W.18 have been recorded and exhibits as Ex.P.31 to Ex.P.40 have been marked.

4. P.W.1, Kanagaraj has stated about the initial complaint made to the police on 21.03.2012, about the missing of his wife Malathy from 20.03.2012 and the registration of FIR as per Ex.P.22 in Crime No.58 of 2012 with regard to the missing of the said lady. P.W.15, Mr. Mohandass, Inspector of Police, has received the FIR copy through P.W.10, Tmt.Alageswari, Head Constable and he has gone to house of the deceased Malathy and prepared Ex.P.2 Observation Magazar and Rough Sketch Ex.P.27 and also enquired the P.W.2 Nallathambi.

https://hcservices.ecourts.gov.in/hcservices/

5. P.W.3, Dr.Manimekalai has stated that she gave an outpatient treatment to the deceased Malathy and also stated about

WEB COPY

the insertion of the "Copper T" on 20.03.2012 at about 01.00P.M., on the body of the deceased Malathy and also stated about the issuance of the Certificate as per Ex.P.3. Further, P.W.5, Appavu Naicker, has stated that on 23.03.2012, early morning at 06.00A.M., he has taken the cows for grassing and along with him two dogs also came, at that time near the pitch of the quarry, the dogs have barked repeatedly, and at that time, he has seen that Karthick, the first accused has tried to remove the Nylon rope tied in the body of the deceased Malathy and the appellant is also known to him earlier, and thereafter, the police have come there and taken further proceedings. P.W.4, Dr. Prabhakaran has stated that he has conducted Postmortem on the body of the deceased Malathy in Crime No.58 of 2012 and he has found the wounds as mentioned in the Postmortem Certificate as per Ex.P.6 and (1) and (2) injuries could have been caused due to the M.O.11 sharp edged stone and the police have enquired him on the same day of Postmortem, namely, on 23.03.2012 by showing the M.O.11 sharp edged stone.

6. P.W.6, Mr. Manoharan, Village Administrative Officer has stated that the appellant Karthick has appeared before him on 23.03.2012 and also gave a confession statement and he has attested in Observation Magazar of Ex.P7 and Magazar of Ex.P.8 and the police have recovered M.O.10 to M.O.13 and the jewels and he has signed in the Magazar prepared as per Ex.P9 and he has signed in the confession statement and M.O.4, M.O.8 and M.O.9 are the jewels recovered by the police. He has submitted a report to the police station as per Ex.P.10 and he has attested the confession statement given by the appellant and Ex.P.12 is the admissible portion of the confession statement given by the appellant.

7. P.W.7, Ellumalai, has stated that he has seen the body of the deceased Malathy on 23.03.2012 at Thirukakkalmedu Stone Quary. P.W.8, Nagaraj has stated that he has gone to the Manimekalai Hospital to see Malathy and he has left Malathy in the Jawahar Bazaar, as she has wanted to purchase certain things from the shop. P.W.9, Mr.Murugesan has stated that on 17.04.2012, he has received the order copy from the learned Judicial Magistrate and sent the Material Objects to Forensic Expert Opinion. P.W.10, Tmt.Alageswari, Head Constable has stated that she has received the F.I.R. in Crime No.58 of 2012 and also submitted the copies to the higher officials and also the learned Judicial Magistrate No.2. P.W.11, Tmt.Shanthi, Head Constable has stated that with regard to the case in Crime No.58 of 2012, she has handed over the Material Objects under Form-95 to the Court as per Ex.P.21 and also she has handed over M.O.1 to M.O.3 and M.O.5 to M.O.7.

8. P.W.12, Mr.Kadhi Narasimman, Special Sub Inspector of Police has stated that on 21.03.2012, he has received the complaint from P.W.1 Kanagaraj and registered the case in Crime No.58 of 2012 and prepared the F.I.R as per Ex.P.22. P.W.13, Mr.Rajendran has stated that he is working in Forensic Lab as Junior Scientific Inspector and there is no poison in the internal parts of the body

https://hcservices.ecourts.gov.in/hcservices/

of deceased Malathy, and also, issued Report as per Ex.P.23. P.W.14, Mr.S.Thangavel, has stated that he has served as an Inspector of Police and he has got requisition letter with regard to the case in Crime No.58 of 2012 and as per the request, he has collected the call details, with regard to the cell phone Nos.9047281078, 9751097784 and 9843127027, from 15.03.2012 to 25.03.2012. P.W.15, Mr.Mohandass, Inspector of Police has stated that he has taken further investigation on the Crime No.58 of 2012 and on 23.03.2012, at 08.00A.M., the P.W.6, the Village Administrative Officer has produced the appellant Karthick along with his report and confession statement and on 23.03.2012 at 08.15 A.M, he has arrested the appellant and in the presence of P.W.6 and Vairavan, he has prepared Observation Magazar and Rough Sketch as per Ex.P.28 and thereafter, he has filed Alteration Report as per Ex.P.29 and he has prepared Inquest Report as per Ex.P.30 and he has sent the accused to the Court for Remand and also sent the Material Objects to the Court. P.W.16, Mr.Rajasekaran has stated that he has served as Inspector of Police on 14.04.2012 in Pasupathypalayam police station and enquired the P.W.4, Doctor who has conducted Postmortem on the dead body of deceased Malathy and he has lodged the Final Report on 14.06.2012.

9. Further, as per the orders passed by this Court on 12.03.2015, the Additional Evidences have been recorded and P.W.17, Mr.Rameshkumar has stated that he has served as Inspector of Police at Pasupathypalayam police station on 30.01.2015 and he has sent the requisition letter as per Ex.P.31 to the Vodofone Network Limited for furnishing the Customer Application Form in the year 2012, with Address Proof for Vodafone cell number No.9751097784 in the name of the appellant Karthick and Ex.P.32 is the E-Mail copy sent by him to the Vodafone Network Limited and Ex.P.33 is the E-Mail message received from the Vodafone Network Limited and Ex.P.34 is the application filed by Karthick to get Vodafone pre-paid cell phone number with Sim Card details dated 28.10.2010, as per Ex.P.35 received Application Copy for the year 2010, and Ex.P.36 is the Driving Licence dated 26.04.2006 of the said Karthick. Ex.P.37, is the reply received from the Vodafone Network Limited, to the effect that the cell phone number has been activated in the name of Karthick in the year 2008 and subsequently in the year as per the Department of Telecommunication re-verification process, the Vodafone Network Limited has collected a fresh Customer Application Form and supporting the documents from the customers and hence the difference in the documents and the address. P.W.38, is the Pre-paid Application Form of Vodafone Network Limited with backside details. Ex.P.39 is the Driving Licence of the appellant Karthick. P.W.18, Mr.Sunil, has stated that he is working as Deputy Manager in Vodafone Network Limited, Chennai and on 22.03.2008, the appellant Karthick has been allotted cell phone number of 9751097784 and he has submitted Ex.P31 to Ex.P37, records submitted by Karthick in the year 2008 and also in the year 2010 to the Vodafone Network Limited.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

10. It is stated in the Grounds of Appeal that the judgment of the Lower Court is contrary to law and probabilities of the case. The Lower Court has miserably failed to consider the vital contradiction between the evidences of P.W.3 and P.W.8 with regard to the hospital, wherein the deceased has gone for fixing the "Copper T". The Lower Court has failed to consider the contra version with regard to the date and time, when the appellant and others have attempted to remove the body of the deceased from the pitch, near the quarry of the Chettinad Cement Factory. The Lower Court failed to observe the contradictions in the evidences of prosecution and also failed to give the benefit of doubt to the appellant. The judgment of the Lower Court is against the law and weight of evidence.

11. This Court has heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent and also perused the materials on record carefully.

12. The learned counsel for the appellant has submitted that the evidences of the prosecutions cannot be believed and also not acceptable. There are vital contradictions in the evidences of the prosecution. Further, the learned counsel for the appellant has submitted that because of the vital contradictions, which are material, the appellant is entitled for acquittal. During the course of the argument, the learned counsel appearing for the appellant has pointed out about, certain other contradictions in the evidences of the prosecution and also referred to the reasons mentioned in the Memorandum of Appeal. Further, the learned counsel for the appellant has submitted that conviction and sentence imposed on the appellant is not sustainable.

13. Mr.R.Ramachandran, Additional Public Prosecutor has opposed this Criminal Appeal and he has submitted that there is no material contradictions in the evidences of the prosecution. Further, the learned Additional Public Prosecutor has also submitted that all the cumulative effect of the facts, have established the prosecution case and also the prosecution has clearly established the preparation of observation magazar, Rough Sketch, Inquest Report and Scientific Expert Opinion. Further, the learned Additional Public Prosecutor has also submitted that absolutely, there is no reason as why the evidences of P.W.1, P.W.4, P.W.5 and P.W.6 should be rejected and there is no material contradictions between the evidences of P.W.1 and P.W.5 and other evidences of the prosecution. Accordingly, the learned Additional Public Prosecutor has also submitted that minor contradictions as pointed out by the learned counsel for the appellant, cannot be given any weightage and also the above mentioned various Material Objects, Exhibits and prosecution evidences have clearly established that the appellant has committed the said offence.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

14. The points that arise for consideration in the present Criminal Appeal are as follows:-

1) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?

2) Whether the Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant?

15. Analysis, discussions and findings with regard to the above mentioned points:-

P.W.1, Kanagaraj is the husband of the deceased. At the first instance, he has lodged the complaint on 21.03.2012 about the missing of his wife Malathy from 20.03.2012, as per Ex.P.1. He has also explained that he has searched for his wife in the relatives' houses and other places and thereafter only he has lodged the initial complaint to the police on 21.03.2012, as per Ex.P.1. Regarding the said complaint, F.I.R. has been filed as missing of woman, as per Ex.P.22 and the same has been received by the learned Judicial Magistrate No.2 on 22.03.2012. Thereafter, P.W.1 has stated that P.W.5 namely Appavu Naicker has stated to him that the said P.W.5 has seen the appellant Karthick, taking the body of the deceased Malathy from the pitch, near the quarry of the Chettinad Cement Factory. Further, P.W.1 has identified the dresses of the deceased Malathy, namely, M.O.1 to M.O.3 and also the jewels of the deceased Malathy as M.O.4 to M.O.8 and cell phone as M.O.9.

16. P.W.5, Appavu Naicker has categorically stated in his evidences that on 23.03.2012, he has taken Cows for grassing and two dogs also have come with him and near the pitch, of the quarry of Chettinad Cement Factory, the dogs have parked and at that time, he has seen the appellant Karthick removing the Nylon rope from the body of the deceased Malathy and the appellant Karthick is known to him and the police have come and thereafter they have taken further proceedings. Further, P.W.5 has also stated that the accused Karthick has used to take his cows in his vehicle, and therefore he is known about the accused Karthick, namely, the appellant herein. Further, it is pertinent to point out that no motive has been suggested, on behalf of the appellant herein, with regard to the testimony of P.W.5. Further, it is found that the evidence of P.W.5 is natural and trustworthy. Thereafter, only the P.W.1 has gone to the place of occurrence and identified the Material Objects and also the dead body of the deceased wife. Further, P.W.2, Nallathambi, has stated about the Observation Magazar prepared as per Ex.P.2, based upon the Ex.P1 initial complaint. Further, P.W.3 Dr.Manimekalai has also clearly stated that on 20.03.2012, the deceased has come to Vijay Hospital and “Copper T” has been fixed in

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the body of the deceased Malathy and she has issued Certificate as per Ex.P.3. Hence, the minor contradictions pointed out on behalf of the appellant, in the evidence of P.W.3 and P.W.8 with regard to the hospital, wherein the deceased has gone for fixing the "Copper T" are not very much material, to affect the case of the prosecution.

17. P.W.4, Dr.Prabhakaran has conducted the Postmortem on the deceased body of Malathy, in the case registered in Crime No.58 of 2012 and also pointed out in the Post Mortem Report of Ex.P.6, the following injuries:-

> *"External Injuries : Body swollen, skin peeled off in various places. (1) Stab wound 6 cm. X 4 cm x cavity depth (t) in the midline of the abdomen 8 cms above the umbilicus, oval in shape with irregular inverted margins, both the angles are blunt, directed upwards and laterally and the intestines protruded out from the wound.*
>
> *(2) Laceration 5 x 1 x muscle depth in the right upperneek 2cms below the angle of the mandible, with irregular margins.*
>
> *O/d : Skull-intact, Brain-liquified. Hyoid bone-preserved. Thoracie cavity contains 50ml of blood. Rib # in 2 to 5 ribs on left side on anterior aspect with surrounding Hematoma. Lungs-Pale and partially decomposed. Heart-Empty. Liver-Laceration 2 x 1 x 0.5cm in the inferior surface with irregular margins with blunt angles.*
>
> *Injury No.1 is found to be piercing the Skin, anterior abdominal wall in upwards and lateral direction and ends in the above mentioned liver laceration.*
>
> *Stomach contains 20 ml. of dark brown coloured fluid.*
>
> *(3) spleen-decomposed. Bladder-empty. Uterus - "Copper T" present Abdominal cavity contains 750ml of blood. All the inter organs are pale. The viscera are preserved.*
>
> *The deceased would appear to have died of SHOCK AND HEMORRHAGE due to injury to vital organ."*

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Further, P.W.4 has also specifically pointed out in his evidence that the wound Nos.(1) and (2) could have been caused by the shape edged stone and on 23.03.2012, he has conducted the Postmortem, the police have shown M.O.11 sharp edged stone and also enquired about the incident.

18. P.W.6, Mr. Manoharan has stated that he has worked as Village Administrative Officer and on 23.03.2012, the appellant has appeared before him and gave the statement and he has submitted the report to the police as per Ex.P.10. Further, P.W.6 has clearly stated in his presence, the Observation Magazar as per Ex.P.7 has been prepared and he has also attested in the Ex.P.7 and Ex.P.8 Seizure Magazar. On perusal of the Ex.P.7 and Ex.P.8, it is found that P.W.6 has attested in the said Magazars. Further, P.W.7 has stated about the recovery of M.O.10 to M.O.13 and about attesting the Magazar as per Ex.P.9 and about the admissible portion of the confession statement of the appellant as per Ex.P.12. Further, P.W.6 has categorically denied the suggestion put, on behalf of the appellant to the effect that the Material Objects have not recovered in his presence.

19. P.W.7, Elumalai has also specifically stated about the search for the deceased Malathy on 20.03.2012 and thereafter on 23.03.2012, they have seen the body of the Malathy in the pitch, near the quarry of the Chettinad Cement Factory. P.W.8, Nagaraj has clearly stated that he has seen Malathy on 20.03.2012 in the hospital and he has left Malathy in Jawahar Bazaar as she has gone to purchase certain things in the Bazaar. Further, P.W.9, Mr.Murugesan has pointed out that on 17.04.2012, as per the orders of the learned Judicial Magistrate, he has sent the Material Objects for Forensic Expert Opinion. P.W.10, Tmt.Alageswari, Head Constable has stated about the receipt of F.I.R. in Crime No.58 of 2012 based upon the initial complaint lodged by the P.W.1 regarding the missing of his wife and also about submitting it to the learned Judicial Magistrate and other officials. P.W.12, Mr.Kadhi Narasimman, Special Sub Inspector of Police has specifically stated that P.W.1 has lodged the complaint and he has registered a case in Crime No.58 of 2012 regarding the missing of Malathy. Further, P.W.13, Mr.Rajendran, Junior Scientific Inspector has stated that there is no poison in the inner organs of the deceased Malathy. Further, it is the case of the prosecution that the appellant only has brutally assaulted the deceased Malathy with the help of M.O.11 sharp edged stone and caused death, due to the previous enmity.

20. P.W.14, Mr. Thangavel, Inspector of Police has clearly stated that he has got requisition letter with regard to the case in Crime No.58 of 2012 and he has collected the call details, with regard to the cell phone Nos.9047281078, 9751097784 and 9843127027, from 15.03.2012 to 25.03.2012 and also P.W.17, Mr.Rameshkumar, Inspector has stated about the Vodafone cell phone details of the appellant and also P.W.18, Mr.Sunil, Deputy Manager, Vodafone Network Limited, Chennai has clearly stated that about the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Requisition Letter of Inspector of Police, Pasupathipalayam as per Ex.P.31, prepaid application form submitted by Karthick with photo affixed as per Ex.P.38 and Driving Licence of the said Karthick as per Ex.P.39, another Application dated 28.10.2010 for prepaid application submitted by Karthick to Vodafone Network Limited, with regard to the cell phone of the appellant and also the explanation has been given by the Vodafone authorities to the effect that the said cell number has been given to the appellant Karthick in the period of 2008 and subsequently in the year 2008 as per the Department of Telecommunication Re-verification process, the Customer addresses and documents from the customers namely Driving Licence received from the appellant Karthick and hence, it is found that the explanation offered by the said prosecution witnesses are acceptable, admissible and valid.

21. P.W.15, Mr.Mohandass, Inspector of Police has clearly stated about the preparation of Rough Sketch as per Ex.P.27, regarding the house of the deceased Malathy and Ex.P.28, Rough Sketch regarding the place of occurrence, namely, the pitch near the quarry of the Chettinad Cement Factory. Accordingly, after examining the relevant statements of the witnesses and exhibits and material objects, the P.W.15 has filed the Alteration Report in Crime No.58 of 2012 under section. 302, 379 and 201 I.P.C.

22. Further, it is seen that the reasons pointed out on behalf of the appellant in the Grounds of Appeal are not acceptable for the above mentioned material evidences and acceptable records submitted on behalf of the prosecution side. Further, the prosecution has proved beyond reasonable doubt, with regard to the recovery of the body of the deceased Malathy, other things like recovery of dresses and jewels of the deceased Malathy and other material objects. Further, on a careful scrutiny of the entire materials on record, it is found that the case of the prosecution has been established with material evidence and also corroborated by the materials on record and also established the nexus of the appellant herein with the said crime. Further, through the medical evidence and the other material evidences and exhibits and material objects, the prosecution has proved to the fact that the appellant alone has caused the brutal attack on the deceased Malathy.

23. Further, in the judgment of Hon'ble Supreme Court, in the case of *of State of Rajasthan Vs. Kishore, (AIR 1996 SC 3035)*, it is clearly observed as follows:

> *". . . It is now well settled principle that any irregularity or even illegality during investigation ought not to be treated as a ground to reject the prosecution case . . . "*

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

This instructive authority of the Hon'ble Supreme Court invites an instant application in the present case. The alleged minor discrepancies and minor contradictions are immaterial and they can not be held to go to the root of the case, as the prosecution has established the case beyond reasonable doubt by adducing the acceptable evidences and documents to establish the prosecution case. The credibility of the witnesses and other aspects, have been established, in accordance with law, by the prosecution.

24. Further, this Court is not finding any substantial and compelling reasons to interfere with the judgment and conviction of the Lower Court. Further, there are no good, sufficient and cogent reasons and also strong reasons to interfere with the Lower Court Judgment. In the ordinary course of conduct of the husband of the deceased Malathy, P.W.1, has searched for his wife in the relatives' houses and other places and the same is free from doubt. Accordingly, he has lodged the complaint as per Ex.P.1 and identified the M.O.1 to M.O.9. The view taken by the Lower Court is clearly reasonable and the same is warranted by the materials available on record. The Lower Court has rightly observed that the witnesses examined and material objects produced are inspiring confidence to assert the guilt of the accused / appellant. There is no material deficiency in the evidence of eye witnesses. Certainly, the practices and principles that served in the past must give way to innovative and creative methods in order to save our criminal justice system. Further, the emergence of new types of crimes and their level of sophistication have made in the necessity of scientific methods in crime detection.

25. In this connection, it is useful to refer to the decision reported in *AIR 1992 SC 840, State of UP Vs. Ashok Kumar Srivastava* : wherein it is clearly stated as follows:

> *" The circumstance relied upon must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts is established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet each and every hypothesis put forward by the accused however far fetched and fancieful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest dought because the law permits rejection if the doubt is reasonable and not otherwise."*

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

26. Further, the specific case put forth on the side of the prosecution is that on the basis of confession alleged to have been given by the appellant/first accused, M.Os.1 to 3 namely the dresses and M.Os.4 to 8, namely the jewels and also M.O.9, the cell phone of the deceased Malathy have been recovered in the presence of PW.6 (VAO) and the said articles have been marked through the husband of the deceased by name (PW1) Kanagaraj. At this juncture, a nice legal question arises as to whether recoveries made under Section 27 of the Indian Evidence Act, 1872 in pursuance of confession alleged to have been made by the appellant/first accused under Section 25 of the Indian Evidence Act, 1872 can be looked into so as to connect the appellant/first accused with the crime. As narrated earlier, the confession alleged to have been given by him as well as recovery of M.Os.1 to 9, as mentioned above, have been clearly proved on the side of the prosecution. Further on the side of the prosecution, the said Material Objects have been clearly identified by P.W.1 and he is a competent witness, being the husband of the deceased.

27. Further, in the case of *Wakkar and Another V. State of Uttar Pradesh,* reported in *(2011) 3 SCC 306,* the Hon'ble Supreme Court has held as follows:-

> "Such recovery by itself cannot form basis of conviction – Recovery of incriminating articles and its evidentiary value has to be considered in light of other relevant circumstances as well and chain of events suggesting involvement of accused – Herein, courts below did not rest conviction of appellants solely based on recoveries – Recovery of articles used in commission of offence was taken into consideration together with other incriminating circumstances brought on record by prosecution."

Further, in the case reported in *(2015) 3 SCR 876, [Pawan Kumar @ Monu Mittal V. State of Uttar Pradesh & another],* the same legal position has been dealt with, wherein, the Hon'ble Supreme Court has held that 'if a confession has been made by an accused and on the basis of the same, proper recovery as well as identification have been established, the accused/deponent of the confession cannot take shelter under Section 25 of the Indian Evidence Act, 1872.

In the instant case also, as pointed out supra, the prosecution has clearly established the confession alleged to have been given by the appellant/first accused and on the basis of his confession, M.Os.1 to 3, namely, the dresses and M.Os.4 to 8, namely, the jewels and M.O.9, cell phone of the deceased Malathy, have been recovered and properly identified by the husband (PW1) of the deceased. Therefore, in the instant case, confession leading to

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

recovery and also identification have been clearly proved and the same itself is a strong ground so as to point out the said guilt of the appellant/first accused. Apart from the confession leading to recovery and identification, as stated earlier, the prosecution witness No.5 viz., Appavu Naicker has clearly deposed in his evidence that on 23.03.2012, while he has been taking cattle for grazing along with his two dogs, found the appellant/first accused and others in the place of occurrence and at that time, the appellant/first accused has tried to remove the string tied on the body of the deceased.

Further, the Lower Court has rightly relied on the following judgments:-

i) AIR 1959 (SC) 902 (Mulk Raj Vs. State of Uttar Pradesh)

ii)1993 Cri.L.J.3113 (Arjuman and others etc. Vs. The State)

iii)2010 Cri.L.J.3871 (Sanatan Naskar and another Vs. State of West Bengal)

28. The learned counsel appearing for the appellant has vehemently contended that all the circumstances are inconsistent with the appellant / first accused and the evidence of prosecution witnesses and materials are very doubtful in the present case. However, on a cumulative consideration of the above mentioned entire evidence of the prosecution and also exhibits and material objects, it is found that the prosecution has established the allegation made against the appellant by producing the reliable, trustworthy and credible witnesses, exhibits and material objects, in the present case. The learned counsel appearing for the appellant has repeatedly contended that there is no positive and supportive evidence with regard to the allegations made by the prosecution as against the appellant. However, it is found that the prosecution has produced cogent, natural and trustworthy evidence and material objects and exhibits to establish the crime committed by the accused.

29. On a careful scrutiny of the entire materials available on record, it is found that the reasons given by the Lower Court for conviction of the accused are fairly sound. Further, the finding given by the Lower Court is in accordance with proper appreciation of evidence and also the view taken by the Lower Court is reasonable.

https://hcservices.ecourts.gov.in/hcservices/

30. In the result, the judgment of the learned Learned District Sessions Judge, Karur passed in S.C.No.8 of 2013 dated 19.12.2013 is confirmed and the Criminal Appeal is dismissed. Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

Sd/-
ASSISTANT REGISTRAR

/ TRUE COPY /

SUB ASSISTANT REGISTRAR

To

1. The District Sessions Judge,
   Karur.
2. The Inspector of Police,
   Vellianai Police Station,
   Karur District.
3. The Central Prison,
   Trichy.
4. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

Pmu
SH:28.07.2015:P13 / 5C

Predelivery judgment made
in

Crl.A.(MD)No.255 of 2014

15.07.2015

https://hcservices.ecourts.gov.in/hcservices/