



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Criminal Appeal (MD) No.128 OF 2013

and

M.P. (MD) No.1 OF 2014

1.Arumugam

2.Sakthivel

... Appellants/Accused 1 & 2

Vs.

State represented by
The Inspector of Police,
Aranthangi Police Station
Pudukkottai District.
[Crime No.340 of 2008]

... Respondent/Complainant

Prayer:- Appeal is filed under Section 374(2) Cr.P.C. to set aside the judgment of conviction and sentence, dated 26.3.2013 and made in S.C.No.156 of 2010 on the file of the learned Sessions Judge, Mahila Court, Pudukkottai.

For Appellants : Mr.S. Deenadayalan
For Respondent : Mr.C. Ramesh,
Additional Public Prosecutor

Judgment reserved on : 27.01.2015

Judgment delivered on: 11.02.2015

J U D G M E N T

(Judgment of the Court was made by T.MATHIVANAN,J)

This memorandum of criminal appeal has been directed against the order of conviction and sentence, dated 26.3.2013 and made in the Sessions Case in S.C.No.156 of 2010 on the file of the learned Sessions Judge, Mahila Court, Pudukkottai, convicting the appellants/accused 1 and 2 under Sections 364, 302 and 389 of I.P.C. and sentencing to suffer life imprisonment and to pay a fine of Rs.5000/- in default to suffer a further period of one year of R.I. under Section 364 of I.P.C., to suffer life imprisonment and to pay a fine of Rs.10000/- in default to suffer a further period of two years of R.I. under Section 302 of I.P.C., and to suffer life imprisonment and to pay a fine of Rs.5000/- in default to suffer a further period of one year under Section 389 of I.P.C.



2.The accused 1 and 2 in the above Sessions case are the appellants herein, whereas the State represented by the Inspector of Police, Aranthangi Police Station being the complainant is the respondent.

3.The appellants may, for easy reference and for the sake of convenience, hereinafter be referred to as the accused 1 and 2 whereas the respondent be referred to as the complainant wherever the context so require.

4.It is manifested from the records that originally the Inspector of Police attached to the Aranthangi Police Station, viz., Subramanian (since deceased) appears to have filed a charge sheet on 1.9.2009 as against the accused 1 and 2 alleging that they have committed the offence punishable under Section 174 of Cr.P.C. altered into one under Sections 363, 302, 376(1) IPC and again altered the section of law into one under Sections 364, 376(1), 302, 302 r/w 34, and 394 r/w 397 of I.P.C. before the learned Judicial Magistrate, Aranthangi.

5.It also appears that the learned Judicial Magistrate, Aranthangi, has taken cognizance of the offences under Sections 364, 376(1), 302 read with 34, 394 read with 397 of I.P.C. in P.R.C.No.24 of 2010 on his file.

6.After the completion of the preliminary enquiry the case was committed to the court of Sessions under Section 209(a) of Cr.P.C. and the learned Sessions Judge, Pudukottai Sessions Division seems to have taken up the case on his file in S.C.No.156 of 2010 and subsequently made over to Mahila Court, Pudukottai for disposal according to law.

7.Based on the materials placed before him the learned Sessions Judge, Mahila Court, had proceeded to frame the following four charges as against the accused 1 and 2:-

- (a). Under Section 364 of I.P.C.
- (b). Under Section 376 of I.P.C.
- (c). Under Section 302 of I.P.C.
- (d). Under Section 389 of I.P.C.

8.When the ingredients of the charges were explained and questioned the appellants 1 and 2 had pleaded innocent and claimed to be tried. Hence, they were put on trial.

9.The prosecution in order to substantiate their case had totally examined as nearly as 27 witnesses and during the course of their examination Exs.P.1 to P.32 were marked and besides this, the material objects ranging from M.Os.1 to 9 were also marked. Neither oral nor documentary evidence was adduced on behalf of the defence.



10. On appreciating and evaluating the evidences both oral and documentary, the learned trial Judge had proceeded to acquit the accused 1 and 2 for the offence under Section 376(1) of I.P.C. and therefore, they were acquitted of the said charge under Section 235(1) of Cr.P.C. However, the learned Sessions Judge had proceeded to find the accused 1 and 2 guilty under Sections 364, 302 and 389 of I.P.C., and convicted and sentenced them accordingly as afore stated.

11. The conviction and sentence imposed against the accused 1 and 2 are under challenge in this memorandum of criminal appeal.

12. Admittedly, there is no direct evidence for the occurrence. It is obvious to note here that the entire prosecution case is depending upon the circumstantial evidence. The learned trial Judge has concluded that the prosecution had brought home the guilt of the accused 1 and 2 through the proven circumstances which formed a complete chain of evidence without any dislink.

13. In *Padala Veera Reddy vs. State of Andhra Pradesh* (1991 SCC (Crl. Page 407), the Hon'ble Apex Court has carved out the cardinal principles to maintain conviction on the culprit primarily on the basis of the circumstantial evidence, which run as under:-

a. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.

b. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.

c. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

d. It must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused.

e. Further, to mulct the accused with criminal liability, the prosecution relied upon the following circumstances:-

1. The last seen theory;

2. Incriminating circumstances just prior to the occurrence;



3. *Incriminating circumstances after the occurrence;*

4. *Section 27 of the Evidence Act in respect of recovery of incriminating material objects and the valuable properties (jewels) of the deceased.*

14. On coming to the case on hand, according to the prosecution, the previous antecedents of the accused 1 and 2 have been picturised as under:-

15. Both the accused had been involving in several criminal cases and their names were also included in the proclaimed offenders record of wanted criminals by the complainant police and they were put under the strict surveillance of the crime branch police under antecedent criminals.

16. In so far as the first accused is concerned, his sister is given in marriage in the village of Anangaraipatty. The accused 1 and 2 are close friends and as such they were planning to go over to Anangaraipatty village under the guise of making and initiating arrangements for marriage alliances.

17. That on 21.8.2009 both of them had been to the house of Muthulakshmi, who is none other than the sister of the first accused and by utilising the relationship of his sister A1 and A2 had contacted P.W.5 Chinammal's family and given false promise of making arrangements for her marriage.

18. They had also spoken to P.W.7 Puravi, who is the father of P.W.5 Chinammal and they were provided with dinner in the house of P.W.5 Chinammal. The deceased Malar is the friend of P.W.5 Chinammal and she had been residing along with her parents adjoining to the house of P.W.5.

19. The deceased had also come to the house of P.W.5 on the night of 21.8.2009 while A1 and A2 were dining at the house of P.W.5 and the deceased Malar had also served food to them along with P.W.5. At that time she was wearing several gold jewellery, such as, nose stud, ear stud and gold chain etc. weighing totally about 32.500 grams. This was noticed by A1 and A2.

20. After having the dinner both A1 and A2 were chatting with the deceased Malar. While so, they had given false promise of making marriage alliances with one of their friends and they were also planning to kidnap her with an intention of committing robbery of her gold ornaments.

<https://hcservices.courts.gov.in/hcservices/> 21. In fact, both the accused had attempted to kidnap both the girls, viz., Chinammal and the deceased Malar out of the their lawful custody.



22.P.W.5 Chinnammal was not willing to go to Chennai along with the accused persons and openly had refused to accompany with them along with the deceased.

23.It is also the case of the prosecution that the accused 1 and 2 had brainwashed the deceased Malar alone by giving her a lot of false hopes.

24.That about 9.00 p.m. On 21.8.2008 both the accused had kidnapped Malar with her jewels. While she was in their custody they had given a small letter (slip Ex.P.3) to P.W.5 Chinnammal through her father P.W.7 Puravi and in that letter they had stated that the deceased Malar was with them and therefore, they had invited P.W.5 Chinnammal to come and join along with Malar to proceed to Chennai where they would arrange with their friends. But P.W.7 Puravi had not immediately handed over that letter to P.W.5 Chinnammal, instead he had handed over that letter on the next day morning only.

25.In pursuant to their previous plan, both the accused went to Valaiampatty along with the deceased Malar and then to Trichy and thereafter, finally reached Aranthangi on the early morning of 22.8.2008. Then by walk they had taken the deceased Malar to an isolated area, namely, Thiruppakulam in Rathinakottai Village, where both of them had committed rape upon the deceased Malar against her will under the cover of darkness. Thereafter, the said Malar was put under threat and they dishonestly removed her gold jewelleryes from her possession.

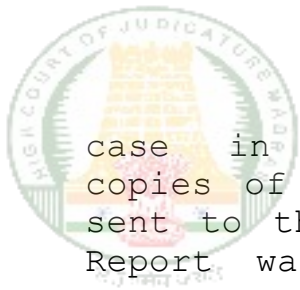
26.After the commission of extortion of gold ornaments, the first accused had forcibly gagged her mouth and nose with his hands, while the second accused had compressed and strangulated her neck. On account of asphyxia and suffocation, blood was started oozing out of her nose and ear and ultimately, she had breathed her last.

27.That on 22.8.2008 at about 2.00 p.m. P.W.2 Ganesan had informed P.W.1 Maruthamuthu, Mukkudi Village Administrative Officer, saying that a dead body of a woman aged about 35 years was found lying on the slope of Thiruppakulam lake.

28.On hearing this, P.W.1 and his village menial one Ramanathan had been there and found the dead body of a woman lying in the said lake. Immediately, he had asked P.W.2 and his village menial to be present near dead body and lodged a complaint before P.W.18 Nagarajan, Sub Inspector of Police attached to Aranthangi Police Station.

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

29.On receipt of the complaint Ex.P.1 he had registered a



case in Cr.No.340 of 2008 under Section 174 Cr.P.C. and the copies of the complaint and the first information report were sent to the concerned officials. The Printed First Information Report was marked as Ex.P.17.

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30. After the receipt of the copies of Ex.P.1 and Ex.P.15, P.W.19 Inspector of Police had taken up the investigation and proceeded to the place of occurrence and inspected the same in the presence of the witnesses, viz., P.W.1, his village menial Ramanathan and prepared an observation mahazar under Ex.P.2 and drawn a rough sketch in respect of the place of occurrence under Ex.P.16.

31. He had also conducted inquest on the dead body of the deceased and prepared an inquest report Ex.P.17 and since nobody was there to identify the dead body and the deceased woman's address was also not known to P.W.19, immediately, he had made arrangements to publish pamphlets in this connection.

32. Thereafter, on his request, P.W.12 Gajalakshmi, Assistant Surgeon, Pudukottai Government Hospital had conducted post mortem examination on the dead body of the deceased. She started conducting of post mortem examination at about 11.30 a.m on 24.8.2008 and during the course of her examination she had found the following external and internal injuries on the dead body.

External Injuries:-

- a. Abrasion seen in front of chest wall right side 3 x 1 cm.
- b. Abrasion right arm 2 x 2 cm.
- c. Multiple abrasion right side of thigh left aspect 3 in numbers 2 x 1 cm size each.
- d. Abrasion left forearm 1 x 1 cm.

Internal Injuries:-

Abdomen : Distended, Peritoneum intact. All organ pale. No injuries. Stomach empty. Intestine empty. Bladder empty.

Chest: No injuries. No rib fracture. Pluera intact. Lung pale, no injuries. Heart Chamber contain liquid blood. Hyoid sent for examination.

CNS : No injuries. No skull fracture. Brain matter liquefied. Skull bone sent for examination. Special Feature : Vagina : labia majora and minora oedematous examined. No injuries found. No blood or other stain was found.

33. During the course of her examination, P.W.12 had found the presence of skin plebs and skin peeling. Vaginal swab was taken for examination. Visceras were collected and sent for chemical examination.



34.The visceras, such as, stomach, intestine, liver, kidney were sent to the Forensic Science Department, Regional Forensic Science Laboratory, Trichy along with the preservative.

35.The above said articles were examined; but poison was not detected in any of them.

36.Vaginal smear was also examined by the Regional Forensic Science Laboratory, Trichy and ultimately, no semen was detected on the above item.

37.Hyoid bone was found intact.

38.From the chemical examination reports received by P.W.12, she had given her final opinion saying that the deceased appeared to have died of more than 72 hours before the post mortem examination and with the available evidence no definite opinion is possible for the cause of the death.

39.Post Mortem certificate issued by P.W.12 was marked as Ex.P.12 and final opinion given by her was marked as Ex.P.13.

40.Apart from this, Bone Case Report, Biology Report, Serology Report and Viscera Report were marked as Exs.P.14, P.25, P.26 and P.27 respectively.

41.After the completion of the postmortem examination on the request made by P.W.19 Inspector of Police the dead body was buried by the officials of Aranthangi Municipality.

42.The wearing materials found on the dead body were seized and sent to the learned Judicial Magistrate and thereafter on the instruction of Deputy Superintendent of Police, the case records were placed before P.W.26 Inspector of Police attached to Manamelkudi Police Station. P.W.26 had taken up the case for further investigation on 22.8.2010.

43.In the meanwhile, that on 27.8.2008 at about 10.00 a.m. P.W.4 Nallu, who is none other than the father of the deceased had lodged a complaint before the Head Constable Amirtharaj attached to Vaiyampatty Police Station. Based on the said complaint under Ex.P.4, the above said Head Constable had registered a case in Vaiyampatty police Station Cr.No.208 of 2008 under Section 363 of I.P.C. The printed first information report was also marked as Ex.P.19. The case in Cr.No.208 of 2008 was taken up for investigation by P.W.20 and at about 11.00 a.m. he had been to Anangaraipatty Village and examined certain witnesses and recorded their statements.

44. That on 29.9.2008 since P.W.20 was put to understand that the deceased woman, concerned in the case in Cr.No.340 of 2008 under Section 174 of Cr.p.C. on the file of the Aranthangi Police Station was related to the case in Cr.No.208 of 2008 on the file of the Vaiyampatty Police Station and therefore, entire case records concerned in Cr.NO.208 of 2008 were sent to Aranthangi Police Station.

45. As it is revealed from the records that on 5.9.2008 the second accused Sakthivel and one Palanisamy had surrendered before the learned District Munsif-cum-Judicial Magistrate, Thirumayam in connection with the above said case and subsequently remanded to judicial custody on the same day itself.

46. That on 8.9.2008, P.W.26 from his investigation, came to know that the deceased woman concerned in Cr.No.340 of 2008 on the file of Aranthangi Police Station was the daughter of P.W.4 Nallu and therefore, he had altered the section of law into one under Section 363, 302 and 379 of I.P.C. from Section 174 of Cr.P.C. and subsequently, sent the express report under Ex.P.28 to the learned Judicial Magistrate, Aranthangi.

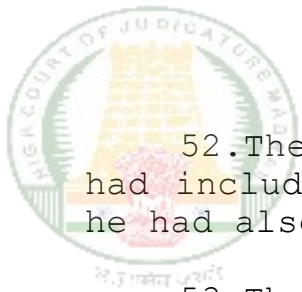
47. On 17.9.2008, he had taken the second accused Sakthivel into police custody and interrogated him. While so, his confessional statement was recorded in the presence of P.W.8 Natarajan, Aranthangi Village Administrative Officer and one village menial Veerabathiran.

48. Based on his disclosure statement, at about 10.00 a.m., on 18.9.2008 he had recovered M.O.Nos.5 and 6 Nose stud and ear stud respectively from the jewellery shop of P.W.13 in the presence of the above said witnesses under the cover of a seizure mahazar Ex.P.7.

49. That on 19.9.2008 at about 4.00 p.m., the first accused Arumugam had appeared before P.W.27 Mrs. Sathyavani, Elavankulam Village Administrative Officer and voluntarily had given a statement, which was recorded by her in the presence of P.W.9 Suresh and one Palani. Thereafter, the first accused was produced before P.W.26 Inspector of Police along with the statement.

50. Based on his statement M.O.8 cell phone was recovered by P.W.26 under the cover of a seizure mahazar Ex.P.9. Thereafter, at about 8.30 P.M. he had recovered M.O.4 gold chain under the cover of Ex.P.10.

51. The statement recorded from A1 by P.W.27 was marked as Ex.P.32. Based on his disclosure statement M.O.4 gold chain was recovered. Thereafter, A1 and A2 were sent to court for being remanded to judicial custody.



52. Then P.W.26 based on the statement given by the witnesses had included the section 376 of I.P.C. and in this connection he had also submitted a report.

53. That on 22.10.2008 P.W.19 had again taken up for the case for investigation as P.W.26 went on leave. From his investigation, he had found that no grounds were available to proceed against the said Palanisamy, who had surrendered along with the second accused Sakthivel and therefore, the said Palanisamy was discharged from the case. In this connection, a report under Ex.P.18 was sent to the court. Thereafter, the Inspector Subramanian (since deceased) had continued the investigation and after the completion of the investigation, he had laid a final report against the accused 1 and 2 on 1.9.2009.

54. With the evidence of P.W.27, the prosecution has closed its side.

55. When the incriminating circumstances arising out of the testimonies of the prosecution witnesses were put to the accused persons during the course of the proceedings under Section 313(1) (b) Cr.P.C., they had categorically replied that they had nothing to do with the alleged offences and that the case was in fact foisted against them and also denied their complicity in the alleged criminality. No witness was examined on the side of the defence and no documentary evidence was also marked on their side.

56. The learned trial Judge on appreciation of the evidences both oral and documentary and after hearing both sides had proceeded to convict and impose sentence on the appellants/accused 1 and 2 as afore stated.

57. Heard Mr. S. Deenadayalan, learned counsel appearing for the appellants/accused 1 and 2 and Mr.C. Ramesh, learned Additional Public Prosecutor appearing for the respondent/State.

58. Mr.S.Deenadayalan, learned counsel appearing for the accused 1 and 2 while advancing his arguments, has invited the attention of this Court to Ex.P.12 and Ex.p.13, viz., Post Mortem report and final opinion issued by P.W.12 Dr. Gajalakshmi.

59. In Ex.P.12 Post Mortem Certificate she has stated as under:-

Opinion as to cause of death:-

a. Reserved pending report of Chemical analysis of viscera and other part.



b. The deceased would have appeared to have died of time of death approximately more than 72 hours.

60. In Ex.P.13, based on the reports of the chemical analysis of viscera, vaginal smear examination, hyoid bone, viz., Ex.P.14, P.25, P.26 and P.27 respectively, she has stated that the deceased had died of more than 72 hours before the post mortem. She has also stated that with the available evidence no definite opinion is possible for the cause of death.

61. In this connection, Mr.S. Deenadayalan, has adverted to that when P.W.12 has stated herself that no definite opinion was possible for the cause of death, the question of involvement of the accused 1 and 2 in this case did not arise and this aspect was not appreciated and considered by the learned trial Judge.

62. Ex.P.19 Printed first information report concerned in Cr.No.208 of 2008 based on the complaint lodged by P.W.4 Nallu was prepared by P.W.20 Inspector of Police attached to Vaiyampatty Police Station on 27.8.2008.

63. In this connection, Mr.S. Deenadayalan, has pointed out that in Column No.7 of Ex.P.19 the names of six accused had been given and the name of the first accused Arumugam s/o. Nallaiah also found place as accused No.3. However, the name of the second accused Sakthivel did not find place and in this connection, he has suspected the genesis of the complaint Ex.P.1 alleged to have lodged by P.W.1 Village Administrative Officer as well as Ex.P.19 First Information Report and Ex.P.4 complaint lodged by P.W.4 Nallu.

64. He has also maintained that in so far as this case is concerned two first information reports were registered and without a thorough and proper investigation, the appellants/accused 1 and 2 had been implicated in this case falsely and in fact no direct witness was available to indict the accused 1 and 2 with reference to their involvement in the alleged crime.

65. Mr. S. Deenadayalan has also invited our attention to paragraph Nos.20 and 21 of the judgment of the trial court wherein the learned trial Judge has observed that both the accused and the deceased were seen together before and after the occurrence, the suspicious conduct of the accused before and after the occurrence were all some of the circumstances which would indicate the strong motive for the accused to commit the crime.



66.The learned trial Judge has observed that nothing has been elicited to discredit their evidence and that there was no hesitation to conclude that all the above circumstances would go to show that the prosecution had proved each and every link of the chain of circumstances to complete the events to point out that the accused alone had committed the offence.

67.In paragraph 21, the learned trial Judge has observed that with reference to the investigation, it is now a well settled principle that any irregularity or even an illegality during investigation could not be treated as a ground to reject the prosecution case.

68.In this connection, the learned trial Judge has also placed reliance upon the decision in *State of Rajasthan vs. Kishore* (AIR 1961 SC 3035). Even honest and truthful witnesses may differ in some details unrelated to the main incident because of power of observation, retention and reproduction differ from individual to individual.

69.He has also observed that merely because there is no inconsistency in evidence it is not sufficient to impair the credit of the witness.

70.Mr.S.Deenadayalan has further submitted that the observation of the learned trial Judge in paragraph Nos.20 and 21 were absolutely based on misconception of the testimonies of the prosecution witnesses and that no direct evidence was available to connect the accused 1 and 2 in the criminality.

71.He has further added that the death of the deceased could not be ascertained as homicidal violence as Ex.P.12 and P.13 post mortem certificate and final opinion issued by P.W.12 had gone otherwise.

72.Besides this, he has also indicated that according to the case of prosecution there was a break of events without forming a complete chain. The so-called incriminating circumstances which was considered by the learned trial Judge could not form basis to maintain the conviction on the accused 1 and 2 in the absence of unassailable and clinching evidence.

73.In this connection, he has placed reliance upon the following four decisions:-

a. *M. Nithyanandam vs. Inspector of Police, Ammapettai Police Station, Thanjavur District* (2011) 2 MLJ (Cr1.) 160).

74.In this case, the following two questions were raised before the Division Bench of this Court:-



a. Whether an offence under Section 302 of the Indian Penal Code has been established by the prosecution?

b. Whether conviction can be procured solely on the basis of extra judicial confession by an inconsistent witness?

75. After hearing both sides and on appreciation of the evidences of the prosecution witnesses, the Division Bench of this Court has held that P.W.17 postmortem doctor based on the report had clearly deposed that as the body was decomposed no opinion could possibly be given regarding the cause of death. Further, for the reasons best known to the prosecution the post-mortem certificate of the deceased Vimal has not been produced before the Court and the postmortem doctor had not been examined. It is also admitted by the learned Prosecutor that even in the list of witnesses, the Doctor who conducted the postmortem examination of the deceased Vimal has not been cited as a witness.

76. It has also been held that on record, the cause of death of the deceased Sumithra and Vimal has not been established by the prosecution and therefore, it is not possible to hold that the death of the deceased was due to the homicidal violence.

b. Kattu Raja vs. State by the Inspector of Police, Oragadam Police Station, Kancheepuram (2013 (2) MWN (Cr.) 135 (DB).

77. In this case, another Division Bench of this Court has observed that the relevancy between crime and fact discovered under Section 27 of the Evidence Act must be proved by other evidence and not by confession statement itself.

78. In another decision in **Sonali Mukherjee vs. Union Bank of India with Criminal Appeals Nos.835-36 of 2002 in Battacharya vs. Sonali Mukherjee and others (2013) 2 SCC (Cri) 97 and (2010) 15 SCC 25**, a three Judges Bench of the Hon'ble Apex Court has observed in paragraph No.32 as under:-

"32. The evidence of these two witnesses and more particularly, the doctor, who conducted the post-mortem examination, puts us on guard. A death by poisoning could be in three ways. Firstly, by accidental ingestion; secondly, by suicidal ingestion; and thirdly, by homicidal ingestion. The evidence of Dr. Sahay (PW 4) very clearly suggests that the doctor was not himself certain as to whether the death by poisoning was homicidal. In his evidence, he specifically admitted that it was very difficult to differentiate between suicidal



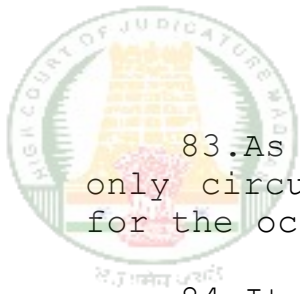
poisoning and homicidal poisoning. We must note that the doctor has not given any specific reason to support his deduction that the death might have been homicidal. On the other hand, his evidence in the court was riddled with contradictions, which contradictions were got proved through the police officer, who recorded his statement. They are very substantial contradictions."

79. In **Manikandan vs. The State represented by the Inspector of Police, Karur Town Police Station (2013 (2) MWN (Cr.) 287 (DB) another**, Division Bench of this Court has observed that in so far as the case depending upon the circumstantial evidence, the onus is cast on prosecution to establish the chain of events/circumstances pointing towards the guilt of accused.

80. Mr. S. Deenadayalan has also argued that absolutely no evidence was available to attract Section 8 of the Indian Evidence Act to establish the motive for the occurrence and that the material documents were sent to court belatedly and on account of this reason, the penal provision of Section 302 of I.P.C. would not be attracted in this case.

81. Countering the arguments advanced by Mr. S. Deenadayalan, Mr. C. Ramesh learned Additional Public Prosecutor has argued that the investigating authorities in this case had contributed their strenuous effort to find out the real culprits and they had also examined the prosecution witnesses meticulously and ultimately, named the accused 1 and 2 as their complicity in the occurrence had been unambiguously proved and the learned trial Judge had also after scrutinisation of the testimonies of the prosecution witnesses had ultimately found the appellants guilty under Section 364, 302 and 389 of I.P.C., after acquitting them under Section 376(1) as the charge under the said Section was not made out against them. Therefore, the conviction and sentence imposed by the learned trial Judge on the accused persons did not require any interference of this Court and therefore, he has urged to confirm the judgment of the trial Court after dismissing the appeal.

82. In so far as this case is concerned, the law was set in motion by the complaint lodged by PW1, the Village Administrative Officer, wherein HC has stated that on the information given by PW2 Ganesan, People Welfare Officer, he had gone to the place, where the body of the deceased was found lying. His testimony is also corroborated by the evidence of PW3, who is an agricultural coolie and seen the dead body of the deceased along with other villagers.



83.As afore-stated in opening paragraphs, it is depending upon only circumstantial evidence, as there is no direct eye witness for the occurrence.

84.It is well settled and no needs to restate that the principle for basing a conviction on circumstantial evidence is that:-

"Each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible."

85.It is also well settled that:-

"The courts have been watchful and avoid the danger of allowing the suspicion to take the place of legal proof, for sometime, unconsciously it may happen to be a short step between moral certainty and legal proof. [see:-**Wakkar and another vs. State of Uttar Pradesh (2011)3 SCC 306** in para 12]

86.From the testimonies of the prosecution witnesses, we find that the following incriminating circumstances are arising for our consideration:-

(i)The deceased was last seen with the company of the Accused 1 and 2 by PW5 and PW7;

(ii)Extra-judicial confession given by A1 before PW27, the Village Administrative Officer.

(iii)The dead body of the deceased was found lying at Rathinakkottai village, Thiruppakulam lake.

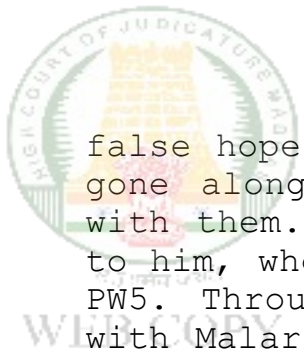
(iv)Medical evidence adduced by Doctor PW12, Gajalakshmi; and

(v)Recovery of golden jewellery from AVM Jewellery shop owned by PW13.

87.**Circumstance No.I:**

The evidences adduced by PW5 Chinnammal and PW7 Puravi, who is none other than the father of PW5 and PW6 a resident of Anankaraipatti village.

PW5 Chinnammal was the close friend of deceased Malar. In her evidence, she has deposed that on 21.08.2008, A1 and A2 came to her house for the purpose of making marriage alliance with A1. On the night of 21.08.2008, both the accused were having dinner in the house of PW5 Chinnammal and as well as the deceased Malar were serving food to A1 and A2. She has further deposed that on the



false hope and promise given by A1 and A2, the deceased Malar had gone along with them, but she had abruptly refused to go along with them. However, PW7 deposed that A1 had given a letter ExP3 to him, who is the father of PW5 Chinnammal for being delivered to PW5. Through Ex.P3 letter, A1 had invited PW5 to come and join with Malar. The testimonies of PW5 and PW7 have been corroborated by the evidence given by PW6.

88.**Circumstance No.II:** With reference to circumstance No.II, the evidences adduced by PW27 Tmt.Sathyavani the Village Administrative Officer and PW9 Village menial are more important.

89.It is revealed from the evidence of PW27 that on 19.09.2008, when she was functioning as Keelathaniyam Village Administrative Officer, A1 Arumugam had come to her place at 4.30 p.m. and voluntarily given a statement, which was reduced into writing by her in the presence of PW9 the Village Menial and one Palani and thereafter, A1 Arumugam was produced before PW26 at 5.00 p.m. That has been ratified by PW26 the Investigating Officer in his evidence. The statement given by PW1 before the Village Administrative Officer has been marked under Ex.P32.

90.On a cursory perusal of the evidence of PW27 as well as PW9, we are able to understand that A1 without any coercion or threat or undue influence had voluntarily on his own volition appeared and given the above statement, which is inculpatory in nature.

91.The learned counsel appearing for the Accused 1 and 2 has pointed out that the statement under Ex.P32 said to have given before PW27 could not be taken into account for the purpose of maintaining conviction on the accused persons. Because, the extra-judicial confession usually make by an accused was a weak piece of evidence and no reliance could be placed upon that statement and therefore, he has urged to discard Ex.P.32.

92.Apart from this, he has also argued that since, the extra-judicial confession had lost sanctity of evidentiary value, it could not be made use for any purpose to rope the accused persons into criminality.

93.This piece of argument advanced by Mr.S.Deenathayalan, the learned counsel appearing for the Accused 1 and 2 is not able to be countenanced for the simple reason that conviction can be based on the extra-judicial confession. Indeed, conviction can very well be based on the extra-judicial confession, if the same is supported by strong circumstances.

94.We would like to place it on record that the extra-judicial confession is also an important circumstance and other



incriminating circumstances have to be militated against the extra-judicial confession said to have been made by the accused persons.

95. In this connection, we would like to place reliance upon the decision in **Kalpana Mazumdar vs. State of Orissa [(2002) 6 SCC 536]**, wherein the Hon'ble Mr. Justice Y.K. Sabharwal while speaking on behalf of the Division Bench of the Apex Court has observed that:-

"Though extra-judicial confession for making it a basis for conviction by itself is a weak piece of evidence and such evidence deserves strict scrutiny, but at the same time, strong circumstantial evidence can get strength from extra judicial confession.... It is an important piece of circumstantial evidence against him.

....The question whether a presumption could be drawn is a matter, which depends on evidence and circumstances of each case. The nature of recovered articles, the manner of their acquisition by the owner, the nature of evidence about their identification, the manner in which the article were dealt with by the accused, the place and the circumstances of their recovery and the length of the intervening period and the ability or otherwise of the accused to explain the recovery are some of those circumstances.

...These circumstances are presumptive evidence of the charge of murder against the appellant.

96. In an another case, in **Baskaran and another vs. State of Tamil Nadu [(2014) 5 SCC 765]**, while penning down the judgment, Hon'ble Justice Mr. S. Gyan Sudha Misra, has observed in para 17 as follows:-

"It is no doubt true that this court time and again has held that an extra-judicial confession can be relied upon only if the same is voluntary and true and made in a fit state of mind. The value of the evidence as to the confession like any other evidence depends upon the veracity of the witness to whom it has been made. The value of the evidence, as to the confession depends on the reliability of the witness who gives the evidence. But it is not open to any court to start with the



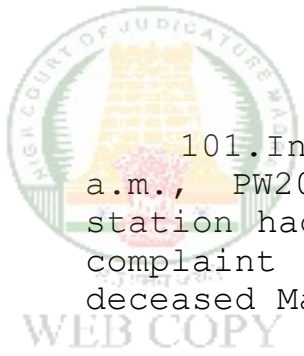
presumption that extra-judicial confession is insufficient to convict the accused even though it is supported by the other circumstantial evidence and corroborated by independent witness, which is the position in the instant case. The court cannot be unmindful of the legal position that if the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction.

97.The extra-judicial confession said to have given by A1 before PW27 under Ex.P32 cannot simply be thrown aside, as argued by the learned counsel appearing for the accused. Because as adumbrated supra, the extra-judicial confession under Ex.P32 given by A1 before PW27 appears to be voluntary in nature and supported by the evidence of PW8, PW9, PW10, PW11.

98.It is also to be underlined that MO4 Gold Chain, MO8 Cell Phone and MO9 a sum of Rs.6,500/- were recovered based on the disclosure statement given by A1, which is also supported by the evidence of PW27 the Village Administrative Officer and PW9.

99.**Circumstance No.III:-** In so far as this circumstance is concerned, the testimonies of PW1, PW2 and PW3 are very much relevant. At the earliest point of time, that is on 22.08.2009, at about 1.00 p.m. when PW2, the People Welfare Officer, had been to Thiruppakulam lake for the purpose of supervising the work of 100 days works scheme, he was informed by some of the boys, who were grazing their cattle that a dead body of a woman was lying on the slope of Thiruppakulam lake. On hearing this, he had gone there and seen an unidentifiable body of a woman lying there and immediately, he had given an intimation to PW1 and he had also come there along with his village menial and after placing PW2 and his menial in the place where the dead body was lying, he straightaway came to Aranthangi Police station at 3.00 p.m. and lodged complaint (Ex.P1) before PW18. A case in Crime No.340 of 2008 under section 174 of Cr.P.C was registered by PW18 based on the complaint lodged by PW1. Thereafter, PW19 took up the investigation and subsequently, PW26 had also taken up the investigation. PW19 had made arrangements to send the dead body for the purpose of conducting postmortem examination, after the completion of inquest (Ex.P17).

100.After the completion of the postmortem examination, one Head Constable had handed over MO3 in skirt, which was found on the dead body and the same was seized by PW19 under Form 95 and subsequently sent to Court.



101. In the meantime, that is on 27.08.2008 at about 11.00 a.m., PW20 Inspector of Police attached to Vaiyapatti police station had registered a case in Crime No.208 of 2008 based on the complaint Ex.P4 lodged by PW4, Nallu, who is the father of the deceased Malar.

102. That on 29.09.2008 from the materials gathered by PW20, he came to know that the deceased Malar concerned in Crime No.340 of 2008 on the file of the Aranthangi Police station, was a woman in respect of whom, the case in Crime No.208 of 2008 on the file of the Vaiyapatti Police station was registered. Therefore, the entire case records relating to the case in Crime No.208 of 2008 were transmitted to Aranthangi Police station to be investigated along with the case in Crime No.340 of 2008.

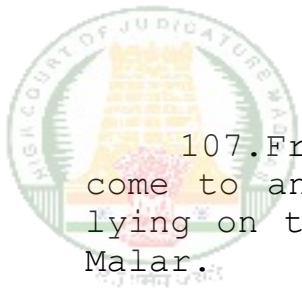
103. Then as afore-stated PW26, another Investigating Officer, attached to Manamelkudi Police station had examined PW4 Nallu and altered the section of law from section 174 Cr.P.C to one under sections 363, 302 and 379 of IPC. The alternation report in this regard is marked as Ex.P28.

104. As it is seen from the testimony of PW26, PW4 had suggested that his daughter could have been murdered by Arumgam (A1) and Sakthivel (A2).

105. It is also an important circumstance that on 05.09.2008, A2 Sakthivel along with one Palanisamy, S/o.Muthu Konar had surrendered before the learned Judicial Magistrate, Thirumayam and both of them were remanded to judicial custody. PW26 had taken him into police custody and interrogated and his voluntarily confessional statement was also recorded by him in the presence of PW8 Idaiyar Village Menial Nataraj and another menial Veera Muthu. After 2 days of A2's police custody, A1 Arumugam had voluntarily appeared before PW27 Keelathaniyam Village Administrative Officer and given a statement, which was recorded in the presence of PW9 **[These facts have already been discussed in the foregoing paragraphs]**

105. PW4, Nallu who is the father of the deceased Malar has stated in his evidence that he had identified the Saree and blouse, which were worn by the deceased at the time of her leaving from his house. The dress materials were marked as MO1 and MO2 respectively. The police people had also shown the photograph of the deceased Malar to PW4.

106. PW16, Chinnasamy, who is the son of PW4 Nallu and the brother of the deceased Malar has also ratified the evidence given by PW4. He has further stated that he had also identified the wearing pearls of his sister in the police station and ratified that they were belonged to his sister Malar.



107. From the testimonies of PW1 to PW4, PW16 and PW26, we have come to an irresistible conclusion that the dead body, which was lying on the slope of Thiruppakulam lake was that of the deceased Malar.

108. Circumstance No. IV:-

With regard to the medical evidence, PW13 Doctor Gajalakshmi says that she had an occasion to conduct the postmortem on the dead body of the deceased Malar. At the time of her examination, the body was found decomposed. Multiple plebs and skin peeling were found all over the body. Blood stain was found over the ear and nose. The external injuries 1 to 4 suggest, as seen from Ex.P12 postmortem certificate, that the deceased could have been struggled for her survival, because abrasions were found in front of chest wall on the right side and multiple abrasions on the right side of thigh left aspect 3 in numbers and abrasion found in the left forearm would lead us to presume that a considerable force could have been used to cause her death.

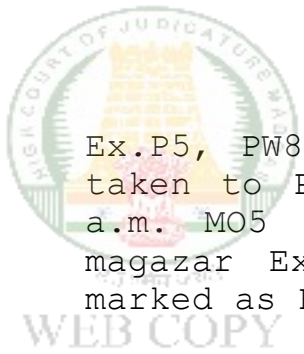
109. Based on the chemical analysis of viscera, bone case report, uterus, PW12 has given her opinion saying that the deceased would appear to have died of more than 72 hours prior to the postmortem and with the available evidence, no definite opinion was possible for the cause of the death. But this opinion cannot be the fundamental reason to uphold the defence case and equally the opinion given by PW12 is not a conclusive prove. It is the judicial parlance that witnesses may lie, but the circumstance will never.

110. It is significant to note here that the dead body was at the earliest point of time found lying on its face and thereafter, on account of its condition i.e., since it was in decomposed condition, the body was immediately sent to the postmortem examination by PW19.

111. On overall assessment of the testimonies of the prosecution witnesses, we find that medical evidence also unerringly pointing towards the guilt of A1 and A2 .

112. Circumstance No. V:

PW13 Vadivelan is the owner of AVM Jewellery shop. He has given a complete go by to his 161(3) Cr.P.C statement as he has turned hostile. However, PW8 Nataraj, Village Menial, being a Government Servant has deposed in favour the case of the prosecution. He has stated that on 17.09.2008, he along with one Veera Muthu had been to police station at about 3.30 p.m. wherein A2 had given a confessional statement, which was reduced into writing by the Police Officer, in which he along with the said Veera Muthu had signed. Based on the disclosure statement under



Ex.P5, PW8 and PW26 Inspector of Police and another witness were taken to PW13's Jewellery Shop on 18.09.2008 and at about 10.00 a.m. MO5 and MO6 were recovered under the cover of a seizure magazar Ex.P7. The observation magazar prepared by PW26, was marked as Ex.P6.

113.Apart from this, PW26 had also, based on the disclosure statement, found place in the confession given by A1 recovered a cell phone MO8. This has been clearly spoken to by PW15. The conduct of PW13, who is the owner of AVM Jewellery as he has turned hostile will not in anyway falsify the case of the prosecution.

114.With reference to the recovery of incriminating articles, by the investigating officer, which was ratified by the other related witnesses is an import piece of circumstance. The nuance of the language coined under section 27 of the Evidence Act assume significance. We also know that recovery of certain incriminating articles at the instance of the accused under section 27 of the Evidence Act by itself cannot form the basis for conviction. However, the recovery of incriminating article and its evidentiary value have to be considered in the light of the other relevant circumstances as well as the chain of events suggesting the involvement of the accused. The trial court did not rest the conviction of the appellant solely based on the recoveries. The fact remains that the recovery of articles used in the commission of offence has been taken into consideration by the learned trial Judge together with other incriminating circumstances brought on record by the prosecution. [**Reference is made to Wakkar and another (2011(3) SCC 306) para 6**].

115.It is also settled proposition of law that while evaluating the circumstantial evidence, the court is under the obligation to find out as to whether the chain of evidence is complete or not.

116.With reference to the right guaranteed under Article 14 of the Constitution of India, the Apex court in **State of U.P vs. Deoman Upadhyaya [AIR 1962 SC 1821: (1963) 1 SCR 253 at 381]** has held that section 27 does not violate the Article 14 of the Constitution. Dealing with the contention that it discriminates between confessions made by persons in custody of a police officer and persons not in custody, the Supreme court has held that the distinction made between the two classes of persons cannot be called arbitrary, artificial or evasive. Persons in custody, and persons not in custody, do not stand on the same footing nor require identical protection.

117.In so far as this case is concerned, the following conditions have been fulfilled by the prosecuting agency to



maintain conviction on the accused persons based on the circumstantial evidence:-

(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

118. In this case also, the facts so established through the prosecution witnesses are consistent with the hypothesis of the guilt of the Accused 1 and 2 and they are not explainable on any other hypothesis except the accused persons are guilty. The testimonies given by the prosecution witnesses are conclusive in nature and the evidence given by important witnesses such as PW1 to PW5, PW7 to PW12, PW15, PW16, 18 to 21, 23 to 27 form a complete chain of events and they have not left any reasonable ground for the conclusion consistent with the innocence of the accused persons 1 and 2 and they have shown in all human probabilities that the act has been done by A1 and A2.

119. On making an empirical research with the evidences of prosecution witnesses, both oral and documentary, we are of the view that no evidence is available to bring the appellants 1 and 2 within the amplitude of section 376(1) IPC. In this connection, we find that the learned trial Judge has correctly found that the appellants are not guilty under section 376(1) of IPC. In other aspect, we find no illegality, discrepancy, defect or perverseness in the judgment of conviction recorded by the learned trial Judge and therefore, we have no other option excepting to dismiss the appeal after confirming the judgment of the trial court.



120. In the result, the Criminal Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(C.O.,)

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Sub-Assistant Registrar

To

1. THE SESSIONS JUDGE, MAHILA COURT, PUDUKKOTTAI.
2. -DO-THRO' THE PRINCIPAL SESSIONS JUDGE, PUDUKKOTTAI.
3. THE JUDICIAL MAGISTRATE, ARANTHANGI.
4. -DO-THRO' THE CHIEF JUDICIAL MAGISTRATE, PUDUKKOTTAI.
5. THE DISTRICT COLLECTOR, PUDUKKOTTAI.
6. THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI.
7. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
[WITH COPIES TO COMMUNICATE TO EACH ACCUSED]
8. THE INSPECTOR OF POLICE, ARANTHANGI POLICE STATION,
PUDUKKOTTAI DISTRICT.
9. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO: THE SECTION OFFICER, CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO MR.D.RAMESHKUMAR, ADVOCATE, IN SR. NO.6583.

Judgment made in
Cr1.A(MD)No.128 of 2013
11.02.2015

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msm 20.02.2015 p22/14c