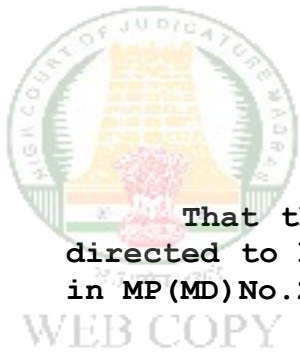


**Bail Slip.**

That the Appellant/Sole Accused viz., Sivamuthu S/o. Panaiyadian was directed to be released on bail as per order of the Court dated 16.07.2012 in MP(MD)No.2 of 2012 in CRL.A(MD)No. 297 of 2011 on the file of this Court

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

Crl.A(MD)No.297 of 2011

Sivamuthu

.. Appellant/ Sole accused

Vs.

State represented by
The Inspector of Police,
Vengamedu Police Station,
Karur District.
Crime No.408 of 2009

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. praying this Court, to set aside the Judgment and conviction, passed in S.C.No.35 of 2010 dated 28.06.2011, on the file of the learned Sessions Judge, Karur and acquit the appellant herein and thus render justice.

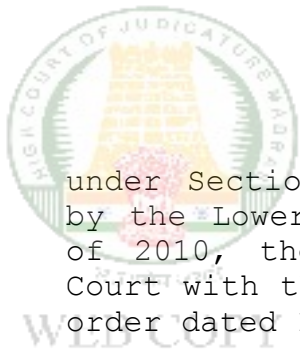
For Appellant : Mr.K.Prabhu, for M/S.Veerakathiravan
C.Jeganathan

For Respondent : Mr.A.Ramar
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by **V.S.RAVI,J.**)

The appellant is the sole accused in S.C.No.35 of 2010 (Crime No.408 of 2009) on the file of the learned Sessions Judge, Karur. He has been charged for the offences under Sections 394 r/w 397 and 302 and 201 I.P.C. The trial Court, by judgment dated 28.06.2011, convicted him for the offence under Section 394 r/w 397 I.P.C., and sentenced him to undergo seven years Rigorous Imprisonment and also imposed fine of Rs.1,000/- and, in default, to undergo further one month Rigorous Imprisonment and also convicted him for the offence under Section 302 I.P.C and sentenced him to undergo Life Imprisonment and also imposed fine of Rs.1,000/- and, in default, to undergo further one month Rigorous Imprisonment. In so far as



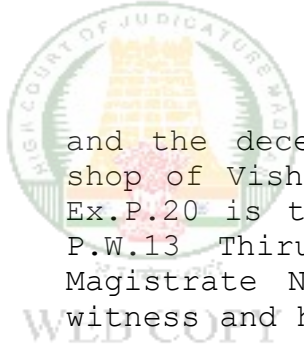
under Section 201 I.P.C., is concerned, the appellant has been acquitted by the Lower Court. Challenging the conviction judgment passed in S.C.35 of 2010, the appellant/accused in Crime No.408 of 2009 is before this Court with this present appeal and he has been enlarged on bail as per the order dated 16.07.2012 passed by this Court.

2.The brief case of the prosecution is as follows;

Accused, namely Sivamuthu has borrowed a sum of Rs.6,500/- on 08.08.2009 from one Ravi to repair his house. But, the accused could not repay the amount borrowed from the said Ravi. The accused has worked as an agricultural labourer in the land of the deceased Pappammal for about two years. The accused has asked the deceased Pappammal, several times to give Rs.5,000/-, in order to repay the amount borrowed from the said Ravi. However, the deceased has refused to give any amount. The deceased Pappammal used to wear a gold chain around her neck. On 08.08.2009, between 5.00 p.m and 6.00 p.m, the accused has murdered the deceased Pappammal in her pump set at Balammapuram, within the limits of Vengamedu police station and also snatched the chain in the neck of the deceased Pappammal, after attacking the deceased Pappammal on her head, with wooden log. Thereafter, the accused has attacked the deceased with Crowbar and the deceased Pappammal has died due to the head injuries and shock. The accused has also spread the chilli powder with an intention to screen the evidence.

2.1. In order to prove the case of the prosecution, the prosecution has examined 15 witnesses as P.W.1 to P.W.15 and also marked 39 exhibits as Ex.P.1 to Ex.P.39 and also marked Material Objects as M.O.1 to M.O.13.

2.2. P.W.1 Vijaya has spoken about the dead body of the deceased, seen at the pump set, namely, at the place of occurrence and P.W.2 Gunavathi has stated about the death of her mother and also she has lodged the complaint as per Ex.P.1 and P.W.3 Usha has also corroborated the evidence of P.W.1 and also she has identified the gold chain as M.O.1 and P.W.4 Annadurai and one Raja have signed in the Observation Magazar of Ex.P.2 and also they have signed in the Magazar as per Ex.P.3, for the recovery of the M.O.2 Bloodstained lime mortar, M.O.3 Sample lime mortar and M.O.4 Chilly Powder. P.W.5 Kandhasamy, Village Administrative Officer has recorded the confession statement as per Ex.P.4 given by the accused and Ex.P.5 is the letter of the said Village Administrative Officer, addressed to the Inspector of Police and P.W.6 Sadhanandha Chidambaram, Village Administrative Officer and his Assistant have signed in the admissible portion of the confession statement as per Ex.P.6 and they have signed in the Magazar as per Ex.P.7 for the recovery of M.O.5 Crowbar, and they have signed in the Magazar as per Ex.P.8, for the recovery of M.O.6 Wooden log and also they have signed in the Magazar as per Ex.P.9 for the recovery of jewels and also they have signed in the Magazar as per Ex.P.10 for the recovery of M.O.7 lungi and M.O.8 shirt. P.W.7 Kumar has taken photos as M.O.9 and the negative of photos as M.O.10, in the place of occurrence and P.W.8 Senthil has stated that the accused has purchased chilli power in his shop and P.W.10 Dr. Kausalya has conducted Postmortem on the dead body of the deceased Pappammal and issued the Postmortem Certificate as per Ex.P.14 and P.W.11 Subramani has stated that P.W.3 Usha



and the deceased Pappammal have purchased the M.O.1 gold chain in the shop of Vishnu Jewellers and P.W.12 Tmt.Krishnakumari has stated that the Ex.P.20 is the Biology Report and the Ex.P.21 is the Serology Report and P.W.13 Thiru.Ilango has submitted the F.I.R to the learned Judicial Magistrate No.2, Karur. P.W.9 Ravichandran has been treated as hostile witness and he has not supported the case of the prosecution.

2.3. P.W.14 Tmt.Kalaiselvi, Constable has handed over the dead body of the deceased Pappamal to Karur Government Hospital, for conducting Postmortem and after completing the Postmortem, she has handed over the dead body of the deceased to the relatives and she has submitted the M.O.11 to M.O.13, namely, the dresses of the deceased to the Inspector of Police. P.W.15 Thiru.Udhayakumar, Inspector of Police has received the Ex.P.1 complaint from P.W.2 Gunavathi and registered a case in Crime No.408 of 2009 under Section 302 I.P.C., and submitted the F.I.R and the said complaint to the learned Judicial Magistrate No.1, Karur and the Ex.P.23 is the First Information Report and also he has prepared Observation Magazar and Rough Sketch as per Ex.P.2 and Ex.P.24 respectively and he has recovered the M.O.2 Blood stained lime mortar, M.O.3 Sample lime mortar, M.O.4 Chilly Powder in the Seizure Magazar as per Ex.P.3 and he has prepared Inquest Report as per Ex.P.25 and he has received the Accident Register of the deceased as per Ex.P.26 and he has recorded the confession statement, in the presence of P.W.6 Village Administrative Officer and Village Assistant and the Ex.P.27 is the admissible portion of the confession statement and he has prepared the Alteration Report as per Ex.P.28 and submitted to the learned Judicial Magistrate and also he has submitted the M.O.2 to M.O.4 to the Court, as per Ex.P.29 and also submitted the M.O.11 to M.O.13, namely, the dresses of the deceased to the Court, as per Ex.P.30 and he has submitted M.O.7 and M.O.8, namely, the dresses of the accused to the Court, as per Ex.P.31 and he has submitted the M.O.6 wooden log to the Court, as per Ex.P.32 and also he has recovered the M.O.1 gold chain in the Seizure Magazar as per Ex.P.9 and he has submitted the M.O.5 Crowbar to the Court, as per Ex.P.34 and he has submitted the requisition letter as per Ex.P.35 to the learned Judicial Magistrate No.2, for sending the material objects to the Forensic Lab and he has submitted requisition letter as per Ex.P.36 to the learned Chief Judicial Magistrate for producing the accused before the learned Judicial Magistrate for recording the statement and the Ex.P.37 is the letter of the learned Judicial Magistrate No.2, Karur to the learned Superintendent of Central Prison and the Ex.P.38 is the Report of the learned Judicial Magistrate and the Ex.P.39 is the order of the learned Judicial Magistrate No.2, Karur and also P.W.15 has enquired the P.W.10 Postmortem Doctor and received the Postmortem Report as per Ex.P.14 and after completing the investigation, he has filed the final report.

3. On completion of the evidences on the side of the prosecution, the accused has been questioned under Section 313 Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and he has stated that he is an innocent and he is not involved in the case and on the side of the accused Ex.D1 is marked.

4. Having considered all the above materials on record, the trial court has convicted the appellant / accused and sentenced him as mentioned in the beginning of this judgment and challenging the said conviction and sentence, the appellant has come forward with the present appeal.



5. It is stated in the Grounds of Appeal, that the judgment of the Court below is against law and weight of evidence. The judgment of the Lower Court is based only on presumption, surmises and conjectures which are not relevant to the circumstances of the case. The Lower Court has failed to consider that Ex.P.4 is a fabricated and also an inadmissible record. The Lower Court has failed to consider about the lot of infirmities in recording the statement of appellant and also the recovery of material objects from him. The Lower Court has failed to properly consider the probabilities of the defence version and failed to consider that the circumstantial evidences are not properly chained to connect the appellant as an accused. The Lower Court has failed to consider the written argument filed by the defence counsel in order to disprove the case.

6. ***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?

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

The learned counsel for the appellant has vehemently submitted that the prosecution case has suffered due to the serious infirmities and inconsistencies. The learned counsel for the appellant has also submitted that the prosecution has put forth its contention by placing reliance on the interested witnesses. The prosecution has not examined the acceptable independent witnesses. The evidences of the prosecution witnesses are unbelievable and they have not given clear and cogent evidences and the prosecution has miserably failed to prove the case beyond reasonable doubt.

8. Per contra, the learned Additional Public Prosecutor has submitted that the case of the prosecution has been established by adducing clear and consistent evidences through the prosecution witnesses. The learned Additional Public Prosecutor has also contended that the occurrence has taken place in the pump set and there is no serious infirmities and inconsistencies between the evidences of prosecution witnesses. Further, the material objects have been recovered to substantiate the case of the prosecution. The learned Additional Public Prosecutor has also submitted that though certain discrepancies have been pointed out by the defence in the prosecution case, the same would not affect the main case of the prosecution.

9. We have given our careful and anxious consideration to the submissions put forth by both sides and also thoroughly gone through the entire materials available on record and perused the impugned Judgment of the Lower Court.

10. P.W.1 Vijaya has pointed out that she is the daughter-in-law of the deceased Pappammal and P.W.2 Gunavathy and one Thilagavathy are the sisters of her husband and the P.W.2 Gunavathy has married one Dhayananth.



Further, P.W.1 has clearly deposed that P.W.2's first husband name is Saravanan and P.W.2 has married one Dhayananth for the second time and therefore, there is no talking terms between P.W.2 and the said Thilagavathy for the past 2 ½ years and on 08.08.2009, the deceased has cut corns and she has cut crops in her land nearer to the land of the deceased and at that time, there arose a dispute between the accused and P.W.1, however, the deceased has supported the accused. Thereafter, she has left the place and only by next day at 7.00 a.m, she has heard the news about the death of the deceased in the motor pump set and she has gone to the place of occurrence and seen the dead body of the deceased. Further, the P.W.2 has lodged the complaint regarding the present case, to the police as per Ex.P.1 and in the said complaint, P.W.2 has stated that she has studied up to M.A. Degree and also the deceased, namely, her mother has cultivated 7 acres of land at Balamapuram and the accused Sivamuthu has helped her mother, in the agricultural operations.

11. However, the P.W.1, namely, daughter-in-law has manifestly deposed in her evidence that there is no talking terms between the P.W.1 Vijaya and P.W.2 Gunavathy for the past 2 ½ years, as P.W.2 has married for the second time one Dhayananth and ignored the first husband Saravanan. Further, in Ex.D.1 also, the sister of the P.W.2 Gunavathy, has clearly admitted that the accused has worked as an agricultural worker for the past 2 years, for the deceased, namely, her mother without making any problem and the accused would not murder the deceased for just Rs.5,000/- and P.W.1 and her brother's son used to repeatedly, quarrel with the deceased for the property and the accused only has helped the deceased during the said disputes. Further, in the written representation given by the accused at the time of questioning under Section 313(1)(b) Cr.P.C., dated 05.01.2011, the accused has clearly pointed out that the said Thilagavathi, namely, the sister-in-law of P.W.1 has appeared before the Court and she has not been examined on behalf of the prosecution. Further, one Thilagavathy, the sister of P.W.2 has admitted in Ex.D.1 that there is a dispute between the P.W.1 Vijaya and his mother Pappammal, due to land matter. Further, the P.W.2 Gunavathy has specifically admitted in her cross examination that she has lodged the complaint to the police as per Ex.P.1 on 09.08.2009 and she has seen the accused, when she has come out from the police station and she has enquired about the death of her mother with the accused. In such circumstances, there arose a serious doubt, with regard to Ex.P.9 Magazar, regarding the recovery of gold chain on 14.08.2009, as per the alleged confession made by the accused at 4.00p.m. Further, the P.W.2 has categorically admitted that on 09.08.2009 itself, she has seen the accused in the police station and she has also clearly deposed that she has lodged the complaint only after enquiring the accused about the occurrence. Further, in the case reported in **1997 (1) CTC 339, (Muthan @ Nambian Vs. State)**, it is clinchingly observed as follows:-

"Extra Judicial Confession is weak piece of evidence and its evidenciary value becomes less when such confession is obtained by Village Administrative Officer after Police Investigation had started."

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

Also, in the case reported in **2004 (2) CTC 338, (Mani Vs. State by Circle Inspector of Police, Thiruvidadimarudur)**, it is detailedly observed as follows:-

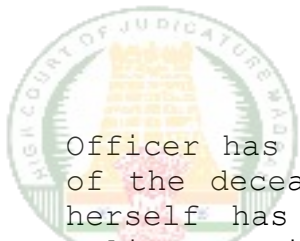


"Extra judicial confession, arrest as well as recovery are not proved beyond reasonable doubt. Though there is a motive, it would not be sole ground for commission of offence in absence of proving other attending circumstances."

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In the present case also, there is a serious doubt to believe that the accused has appeared before the P.W.5 Village Administrative Officer and also one confession statement has been given as per Ex.P.4 on 14.08.2009, though, the alleged occurrence has occurred on 08.08.2009 and the F.I.R has been filed on 09.08.2009 itself. Further, the P.W.5 Village Administrative Officer has manifestly admitted that the accused has not put signature in the extra judicial confession given by the accused to Village Administrative Officer.

12. Further, P.W.3 Usha has undeniably deposed that she has heard about the death of the deceased Pappammal on the next day only. Further, P.W.6 Village Administrative Officer has deposed that he has signed in the Magazar as per Ex.P.8 and Ex.P.9 only, on 14.08.2009, regarding the recovery of M.O.6 Wooden log and M.O.1 gold chain. However, the P.W.2 herself has particularly admitted that she has seen the accused Sivamuthu on the date of lodging the Ex.P.1 complaint on 09.08.2009 itself in the police station, after lodging the said complaint with the police. P.W.5 Kandhasamy, Village Administrative Officer has clearly deposed that he has no knowledge about the accused before on 14.08.2009, namely, before recording the confession statement from the accused. Hence, it is highly doubtful that the accused has given the said confession statement, believing that the said Village Administrative Officer will safeguard his interest. P.W.9 Ravichandran has been examined for the amount of Rs.6,500/- borrowed by the accused from him. However, he has clearly admitted that the amount of Rs.6,000/- has been repaid by the accused to him. Further, on 14.08.2009 only, as per Ex.P.9, the police have recovered the M.O.1 chain. Hence, the motive part that in order to repay the loan amount borrowed from P.W.9 Ravi, and the accused has murdered for gain, is also very doubtful. Further, P.W.10 Dr.Kawsalya, Postmortem Doctor has pointed out that she has conducted the Postmortem on the dead body of the deceased and issued Postmortem Certificate as per Ex.P.14, and also she has specifically stated in the Ex.P.14 Postmortem Certificate that *the deceased would appear to have died of shock and haemorrhage due to head injury and multiple injuries*. However, there are no clinching, acceptable and believable evidences and also materials available on record, to establish that only the accused has committed the offence as pointed out by the prosecution.

13. Further, the P.W.15 Investigation Officer has sent the report as per Ex.P.11 along with the body of the deceased for Postmortem. In that report, it has been clearly pointed out that the jewels of two ear studs with stone in gold and one nose stud with stone in gold are also sent along with the body of the deceased and the said jewels have been found on the body of the deceased on 08.08.2009 - 09.08.2009 between 18.30 hours to 6.30 hours. However, Ex.P.27 admissible portion of the confession statement has been given by the accused, regarding the M.O.1 gold chain on 14.08.2009. If, the accused has really murdered the deceased for gain, then, there is every chance for the accused, to take the said gold ear studs and nose stud also. But, the Investigation



Officer has found out the said jewels are very much available on the body of the deceased, even, after the date of occurrence. Further, the P.W.2 herself has undoubtedly deposed that she has seen the accused in the police station on 09.08.2009 itself, immediately, after lodging the said complaint. Further, on a careful scrutiny of the entire evidences and materials on record, this Court is of the view that the prosecution has not linked the entire circumstances without any break, so as to establish that the accused has committed murder of the deceased for gain. Further, the person examined as P.W.9, in order to prove the motive, with regard to the borrowing of money, has also been treated as hostile witness, as he has not supported the case of the prosecution.

14. Further, P.W.2 has categorically admitted in her evidence that there would be property dispute between the deceased and the P.W.1 and in fact, on a perusal of the evidence of P.W.1, it is found that the evidences of P.W.1 and P.W.2 are not cogent and clear to prove the alleged murder committed by the accused for gain. Further, the extra judicial confession stated to be given by the accused to the Village Administrative Officer, is also not a natural one. Further, the extra judicial confession has been alleged to be given by the accused, after the investigation has been started by the police. Further, the arrest, confession and recovery of the material objects, have not been proved by the prosecution side in the acceptable and believable manner. On a careful analysis of the evidences of P.W.1 to P.W.3 and P.W.15, it is seen that there are no consistencies between the prosecution evidences to establish that the accused has committed the said crime. Further, the prosecution has not examined any acceptable evidence to prove the motive. Further, there are no sufficient records to infer the motive of the accused to commit the murder of the deceased.

15. In this regard, it is useful to refer the following judgments:-

i) In the decision of Hon'ble Supreme Court, in the case of **Jagroop Singh V. State of Punjab**, reported in **(2012) 11 SCC 768**, it is distinctly pointed out as follows:-

"Aspects which have to be taken care of are nature of circumstances, time when confession is made and credibility of witnesses who speak of such confession, before relying on such confession. Court has to be satisfied that it is voluntary and it is not result of inducement, threat or promise."

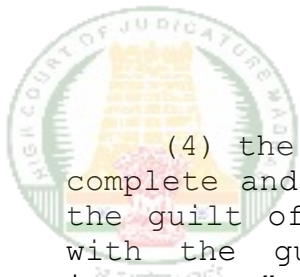
ii) In the decision of Hon'ble Supreme Court, in the case of **Padala Veera Reddy V. State of A.P.**, reported in **AIR 1990 SC 79**, it is significantly held as follows:-

"This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:-

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) 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; and



(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

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iii) **State of Tamil Nadu V. John David**, reported in **2011 (3) CTC 104**, it is clearly observed as follows:-

"Each and every incriminating circumstances 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 could be drawn is the guilt of the accused and that no other hypothesis against the guilt is possible."

16. In the present case also, it is seen that without properly analysing the materials available on records, the Lower Court has convicted the appellant. Hence, the appellant has to be acquitted. In view of the above discussion, this Court has no hesitation to hold that the prosecution has not established the guilt of the appellant beyond reasonable doubts and the above mentioned circumstances also create serious doubt in the case of the prosecution. The doubts have not been clearly explained by the prosecution in any manner and thus, the appellant is entitled to the benefit of such doubts. Thus, it is found that the prosecution has failed to prove the case beyond all reasonable doubts and the appellant is entitled for acquittal.

17 . **In the result**, this Criminal Appeal is allowed and the conviction and sentence imposed by the learned Sessions Judge, Karur, by judgment delivered in S.C.No.35 of 2010 dated 28.06.2011 is set aside and the appellant /accused/ Sivamuthu in Crime No. 408 of 2009 is acquitted. The bail bond, if any, executed by him shall stand cancelled and fine amount of Rs.2,000/- in Receipt No.643057 dated 29.06.2011, paid by him is ordered to be repaid to him.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge, Karur.
- 2 The Judicial Magistrate, No.I, Karur.
- 3 Do Through The Chief Judicial Magistrate, Karur.
4. The Inspector of Police,
Vengamedu Police Station,
Karur District.



5. The District Collector, Karur.

6. The Director General of Police, Mylapore, Chennai.

7. The Superintendent, Central prison, Trichy.

8. 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 M/S.Veera Kathiravan, Advocate in SR.No 57776

TS/28.10.2015/9P - 11C AMF/SAR -II

Cr1.A.(MD)No.297 of 2011

30.09.2015