

BAIL SLIP

The Appellant/2nd Accused in Crl.A.No.432/14 Viz Raji @ Srinivasan S/o.Mani was directed to be released on bail as per order of this Court dated 10/8/15 made in MP.1/15 in Crl.A.No.432/14.

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 15..06..2016

Judgement Pronounced on : 22..06.2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.276 and 432 of 2014

1.Muthu @ Vembadu Muthu [A1]

2.Selvam [A3] ... Appellants in Crl.A.No.276 of 2014

Raji @ Srinivasan [A2]

... Appellant in Crl.A.No.432 of 2014

-Versus-

State Rep. by

The Inspector of Police,
Somangalam Police Station,
Kancheepuram District.

[Crime No.159 of 2009] ... Respondent in both Criminal Appeals

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned Sessions Judge-II, Kancheepuram, in S.C.No.55 of 2010 dated 15.04.2014.

For Appellant (s) : Mr.R.Vijayakumar for Appellants/ A1 and A3 in Crl.A.No.276 of 2014
Mr.A.Raghunathan, Senior Counsel for Mr.S.Saravana Kumar for Appellant/A2 in Crl.A.No.432 of 2014

For Respondent : Mr.M.Maharaja, APP for respondents in both Criminal Appeals

COMMON JUDGEMENT

S.NAGAMUTHU.J,.

The appellants in Crl.A.No.276 of 2014 are Accused Nos.1 and 3 and the appellant in Crl.A.No.432 of 2014 is the Accused No.2 in S.C.No.55 of 2010 on the file of the learned Sessions Judge-II, Kancheepuram. They stood charged for various offences as detailed below:-

Charge Number (s)	Charge(s) framed against	Penal provision(s) under which charges framed
1	A1, A2 & A3	under Section 120-B r/w 392 of IPC
2	A1, A2 & A3	under Section 449 of IPC
3	A1 & A2	under Section 392 r/w 397 of IPC
4	A2 & A3	under Section 302 of IPC
5	A1	under Section 302 r/w 34 of IPC

The trial court, by judgement dated 15.04.2014, convicted A1 to A3 as detailed below:-

Charge Number (s)	Rank of Accused who was found guilty	Penal provision under which conviction was recorded	Quantum of sentence awarded
1	A1, A2 & A3	Section 120-B r/w 392 of IPC	Rigorous Imprisonment for seven years

Charge Number(s)	Rank of Accused who was found guilty	Penal provision under which conviction was recorded	Quantum of sentence awarded
2	A1, A2 & A3	Section 449 of IPC	Rigorous Imprisonment for seven years
3	A1, A2 & A3	Section 392 r/w 397 of IPC	Rigorous Imprisonment for seven years
4	A2 & A3	Section 302 of IPC	Imprisonment for Life and to pay a fine of Rs.5,000/- each in default to undergo rigorous imprisonment for three months
5	A1	Section 302 r/w 34 of IPC	Imprisonment for Life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months

Challenging the above said conviction and sentences, A1 and A3 have come up with CrI.A.No.276 of 2014 and A2 has come up with CrI.A.No.432 of 2014.

2. The case of the prosecution in brief is as follows:- P.W.1, a Post Graduate, is a resident of Somangalam Village. He was managing a farm belonging to P.W.13 in the said village. P.W.1 was residing in the house in the said farm with his wife Mrs.Shanthi and daughter Miss.Poornima. P.W.1 was also doing real estate business. In connection with the said business, many people used to visit his house.

3. On 03.10.2009, at about 10.00 a.m., P.W.1 was taking bath in the bathroom at his house. His wife, the deceased- Mrs.Shanthi, was in the house. P.W.4 Mrs.Kokila is a maid-servant. She was working in the farm. When P.W.1 was taking bath, P.W.4 came to the house of the deceased and told the deceased that two persons had come to meet P.W.1. Those two persons were waiting outside the house, but, inside the farm. The deceased, in turn, informed P.W.1 who was then taking bath that two persons had come to meet him. He told his wife to inform those two persons that he was taking bath. After taking bath, P.W.1 met those two persons who were lying in wait for him. [Those two persons have been, later on, identified as A1 and A2]. When P.W.1 enquired them about the purpose of their visit, they told P.W.1 that they had come to meet

Mr.Jeyachandran [P.W.5] in connection with some land dealings. P.W.1 told A1 and A2 that he had gone out. A1 and A2 told P.W.1 that they had come from Somangalam and they were residing near the State Bank. They wanted P.W.1 to give the mobile number of P.W.5. After getting the same, they went away. Around 11.45 a.m. on 03.10.2009, P.W.1 left the house leaving behind the deceased alone at the house. P.W.4 was still working in the farm. P.W.1 later on came to know that A1 and A2 again came to the farm and enquired with the deceased as to where P.W.1 had gone. The deceased told them in the presence of P.W.4 that P.W.1 had gone out and he would return only by 03.00 p.m. They took some water from the house of the deceased and then, they left the place. Thus, before 03.00 p.m. A1 and A2 were found at the house of the deceased by P.W.4.

4. After A1 and A2 left the house, the deceased instructed P.W.4 to go and inform her brother (P.W.2) to buy a vermicelli (semiya) packet for the purpose of cooking. P.W.4 went to P.W.2 who was also a resident of the same village and informed him. Accordingly, P.W.2 bought vermicelli packet and proceeded to the house of the deceased at 02.15 p.m. P.W.4 had already left. P.W.2 handed over the vermicelli packet to the deceased and left. At that time, the deceased alone was at the house.

5. It was a Saturday in the Tamil month Purattasi which was an auspicious day for the Hindus to perform pooja in the house. P.W.3, the sister of the deceased, was a resident of Mettur village, which is situated near the occurrence village, casually came to the house of the deceased around 03.00 p.m. to know whether the deceased had arranged for pooja. When she reached her house, she found the doors of the house kept wide open. She called the deceased, but, there was no response from inside. When she entered into the house, she found the deceased lying in a pool of blood in a room. There were a number of injuries on the body of the deceased. The deceased was no more. Shocked over the same, P.W.3, crying for help, rushed to her brother's [P.W.2's] house and informed the same. P.W.2 rushed to the house of the deceased and found the deceased lying dead. They also noticed that the gold thali, ear-studs and other gold ornaments worn by the deceased were found missing. Immediately, P.W.2 informed P.W.1 over mobile phone. P.W.1 reached the house at 04.30 p.m. He found that as many as eight items of gold ornaments [M.Os.1 to 8] worn by the deceased were found missing. Immediately, P.W.1 rushed to Somangalam Police Station and made a complaint [Ex.P1] at 06.00 p.m. on 03.10.2009. P.W.20, the thenSub Inspector of Police, on receipt of the said complaint under Ex.P.1 from P.W.1, registered a case in crime No.159 of 2009 under Sections 302 and 379 of IPC. Ex.P.22 is the FIR. Then, he forwarded both the complaint-ExP.1 and the FIR-Ex.P22

to the court which were received by the learned jurisdictional Magistrate at 11.00 a.m. on 04.10.2009. Then, P.W.20, handed over the case diary to the Inspector of Police for investigation.

6. P.W.21, the then Inspector of Police, taking up the case for investigation, visited the place of occurrence at 07.15 p.m., prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P23) in the presence of P.W.7 and another. At his request, the Forensic Experts came to the place of occurrence. The finger print experts also arrived. But, they could not trace any clue from the place of occurrence which could be used as a tangible evidence in court. The police sniffer dog, which was brought to the place of occurrence, also could not make any break through. Then, P.W.21 conducted inquest on the body of deceased at 08.30 p.m. in the presence of panchayatar and prepared an inquest report (Ex.P24). After inquest proceedings were over, he forwarded the dead body to the Chengalpattu Medical College Hospital for postmortem.

7. P.W.19, Dr.Tmt.Parasakthi, conducted autopsy on the body of the deceased and found the following injuries:-

Ante-mortem injuries:-

"(1) Four deep seated cut injuries seen one inside the others with tags of cut skin hanging by its sides measuring 26 cm x 8 cm x Trachea deep with clear cut margins and acute ends. Injury extends from front of left side of neck to whole of back. Blood vessels, cervical bones, muscles, trachea cut.

(2) Stab injury seen on right shoulder measuring 2 cm x 1 cm x bone deep with clear cut margins and acute ends.

(3) Stab injury seen over the angle of right side mandible measuring 1.5 cm x 0.5 cm x bone deep with clear cut margins and acute ends.

(4) Cut injury seen over the upper part of back of right side chest (oblique cut) measuring 2 cm x 0.5 cm x muscle deep.

Skull-Intact. Brain - NAD. C/S-Pale. Hyoid bone-Intact. Lungs-NAD C/S Pale. Heart-Intact. Chambers -Empty, Great Vessels-Intact. Coronaries-Patent. Stomach-Empty. Nil Specific

Smell. Mucosa-NAD. All other internal organs-NAD. C/S -Pale. Bladder-Empty. Genitalia -Intact."

She preserved the visceral organs for chemical analysis and blood for grouping and forwarded the same to the Forensic Sciences Laboratory. Ex.P.21 is the postmortem certificate. After having received the chemical analysis report, P.W.19, the Doctor, opined that the deceased had died due to shock as a result of cervical cut injury. She further opined that the death would have occurred 20-22 hours prior to postmortem. She also opined that the injuries found on the body of the deceased could have been caused by knives, like M.Os.11 and 12.

8. Until 23.10.2009, no break through could be made in the investigation. On 23.10.2009 at 04.00 p.m., P.W.21 arrested A1 in the presence of P.W.9 and another witness. P.W.9 is the local Village Administrative Officer. On such arrest, A1 made a voluntary confession. In that confession, he disclosed the place where he had hidden a gold chain. Ex.P.25 is the disclosure statement. In pursuance of the same, A1 took P.W.21 and the witnesses to the place of hide out and produced a packet containing a gold chain. P.W.21 recovered the gold chain (M.O.7) under a mahazar (Ex.P.6) in the presence of the same witnesses. A2, who was present along with A1, was also immediately arrested by P.W.21. On such arrest, A2 also gave a voluntary confession in which he disclosed the place where he had hidden a blood stained T-shirt and two sickles. He also disclosed the house of P.W.10 to whom he had handed over a pair of gold jimiki for the purpose of pledging. In pursuance of the above said disclosure statement, A2 took P.W.21 and another witness to the place of hide out and produced the blood stained sickle (M.O.11), another blood stained sickle (M.O.12) and light blue colour T-Shirt (M.O.14). P.W.21 recovered the same under a mahazar Ex.P.8 in the presence of the same witnesses. A2 also took the police and the witnesses to the house of P.W.10 where P.W.10 produced a pledge receipt and based on the same, from the shop of P.W.11, gold jimiki (M.O.8) was recovered by P.W.21 under a mahazar (Ex.P.12) in the presence of the same witnesses.

9. Thereafter, on the identification made by A1, P.W.21 arrested A3 at 10.00 p.m. in the presence of the same witnesses. On such arrest, A3 made a voluntary confession, in which, he disclosed the place where he had hidden a gold thirumangalyam, gnanakuzhal (6 Nos.), gold coins (4), gold balls, banana seeppu (1No.), golden mango designed ornament (1 No.). Ex.P.27 is the disclosure statement. In pursuance of the same, A3 produced the above articles (M.Os.1 to 6). P.W.21 recovered the same under a mahazar Ex.P.10 in the presence of the same witnesses. Since A1

to A3 were to be put up for identification parade, P.W.21 ensured that the accused were not exposed to anyone including the witnesses. Then, he forwarded all the accused to the court for judicial remand. He forwarded the material objects also to the court.

10. At the request of P.W.21, test identification parade was conducted by P.W.15, the then Judicial Magistrate No.I, Kancheepuram, on 10.11.2009, in which, A1 to A3 were put up for test identification. During test identification parade, P.W.1 identified A1 alone and he did not identify, A2 and A3. P.W.6 identified A1 and A3 and he did not identify A2.

11. P.W.21, in the course of investigation, examined many more witnesses including the doctor, recorded their statements, collected medical records and on completing the investigation, he laid charge sheet against the accused.

12. Based on the above materials, the trial court framed as many as five charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined, 35 documents and 16 material objects were marked.

13. Out of the said witness, P.W.1, the husband of the deceased has stated that at 10.00 a.m. on 29.10.2009, A1 and A2 had come to his house and enquired about his brother. He has further stated that by 11.00 a.m., he left the house leaving behind his wife alone. He has further stated that P.W.4 was working in the farm. He has spoken about the information passed on to him later on that at 12.00 noon, the accused again came and enquired about him with the deceased and left the house. He has further stated that he later on came to know that P.W.2 at 02.15 p.m. handed over vermicelli packet as requested by the deceased and left. He has also stated that at 03.00 p.m. the deceased was found dead by P.W.3. He has further stated that at about 04.00 p.m. when he reached the house he found the deceased lying dead in a pool of blood with injuries. He has further stated that M.Os.1 to 8, gold jewellerys, worn by the deceased, were found missing from her person. He has stated that he identified all these jewels after they were recovered by the police. He has identified the same in court. He has also stated that during test identification parade, he identified A1 but, unable to identify the other accused.

14. P.W.2, the brother of the deceased has stated that on the day of occurrence, P.W.4 informed him that the deceased wanted him to buy a vermicelli packet and give it to her for

cooking. Accordingly, P.W.2 bought vermicelli packet, went to the house of the deceased at 02.15 p.m. and handed over the same. At that time, according to him, the deceased alone was found. He has further stated that around 03.00 p.m. P.W.3 rushed to his house and informed that the deceased was found lying dead in a pool of blood and with injuries. He has further stated about the missing of gold jewellery. P.W.3, the sister of the deceased has stated that casually she went to the house of the deceased, at 03.00 p.m. to enquire whether the deceased had arranged for pooja. At that time, she found the deceased lying dead with injuries. The gold jewellery worn by the deceased were found missing. Thereafter, she informed the same to P.W.2.

15. P.W.4, the house-maid, has spoken about the above facts. P.W.5, the brother of P.W.1, has stated that on the day of occurrence, he was not there and he came to know about the occurrence later. P.W.6 has stated that on the day of occurrence, at or about the time, somewhere near the place of occurrence, he found A2 and A3 and he has identified A2 and A3 in the test identification parade. P.W.7, the brother-in-law of P.W.1, has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence and also the recovery of blood stained floor tiles and sample floor tiles under a cover of mahazar from the place of occurrence. P.W.8, the employer of A3 has stated that on the day of occurrence in the afternoon, A3 left work spot, after getting permission from him. P.W.9 has spoken about the arrest of A3 and the consequential recovery of material objects as detailed hereinabove. P.W.10 is the one to whom, according to the case of the prosecution, A2 handed over a pair of gold jimikki (M.O.8) stolen from the deceased for the purpose of pledging. According to the case, P.W.10, pledged the same at the shop of P.W.11 under a proper pledge receipt. But, P.W.10 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.11 has stated that P.W.10 pledged M.O.8 at his shop. He has further stated that he returned the same to the police when police wanted the same for investigation. P.W.12 is the employer of A1. He has not stated anything incriminating. P.W.13 is the owner of the farm where the occurrence had taken place. He has also not stated anything incriminating.

16. P.W.14 is the Police Constable, who carried the dead body from the place of occurrence to the hospital, and identified the same to the doctor for postmortem. P.W.15 has spoken about the test identification conducted during which P.W.1 identified A1 alone and P.W.6 identified A2 and A3. P.W.16 has stated that he examined A3, on being produced by the police. At that time, he found injuries on him. P.W.17 has spoken about the fact that A1 was residing at her house. She has also not stated anything incriminating. P.W.19 has spoken about the autopsy conducted and her final opinion regarding the cause of

death. According to her, the death was due to shock as a result of cervical cut injury. P.W.20 has spoken about the registration of the case on the complaint of P.W.1. P.W.21 has spoken about the entire investigation done by him and the filing of charge sheet against the accused.

17. When the above incriminating materials were put to A1 to A3 under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial.

18. Having considered all the above, the trial court convicted the Appellants/A1 to A3 as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 and A3 have come up with CrI.A.No.276 of 2014 and A2 has come up with CrI.A.No.432 of 2014.

19. We have heard the learned senior counsel Mr.A.Raghunathan, appearing for the Appellant/A2 in CrI.A.No.432 of 2014; the learned counsel Mr.R.Vijayakumar, appearing for the Appellants/A1 and A3 in CrI.A.No.276 of 2014 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

20. From the evidences of P.Ws.1, 2 and 4, the prosecution has proved that the deceased was alone at the house on 03.10.2009 between 12.00 noon and 02.15 p.m. P.W.2 has stated that at 2.15 p.m. he went to the house of the deceased and handed over a vermicelli packet to the deceased. Thus, the deceased was lastly seen alive at 02.15 p.m. on 03.10.2009. There is no reason to doubt this fact spoken by P.W.2. Thus, the prosecution has succeeded in establishing that the deceased was lastly found alive by P.W.2 at 2.15 p.m. on 03.10.2009.

21. P.W.3, the sister of the deceased, who is a resident of Mettur village, had incidentally, in a casual manner, visited the house of the deceased at 03.00 p.m. The purpose of her visit was to enquire as to whether the deceased had arranged for pooja as it was an auspicious day for Hindus. When she reached the house of the deceased, according to P.W.3, the doors of the house were kept wide open. When she called the deceased, there was no response from inside the house. Then, she entered into the house where she found the deceased lying dead in a pool of blood with injuries on her body in the room. The gold jewels worn by the deceased were found missing. P.W.3, immediately, rushed to the house of P.W.2 and informed him and P.W.2, in turn, went to the house of the deceased and found the deceased

lying dead. Thus, the deceased was found dead at 03.00 p.m. on 03.10.2009. According to P.W.19, the Doctor, who conducted autopsy, there were stab injuries on the body of the deceased and the death was due to shock and hemorrhage due to the injuries. Thus, the prosecution has succeeded in establishing that the death was caused by stabbing and the deceased died some time between 02.15 p.m. and 03.00 p.m. on 03.10.2009.

22. P.Ws.1 and 2, noticed that gold ornaments worn by the deceased were found missing. P.W.2 informed P.W.1 over mobile phone. Immediately, by 04.00 p.m., P.W.1 rushed to his house where he found his wife lying dead and that the gold ornaments (M.Os.1 to 8) were missing from the body of his wife. Thereafter, P.W.1 had immediately gone to the police station to make a complaint. We do not find any ground to disbelieve this part of the case of the prosecution. So, we hold that the prosecution has established that the death of the deceased and the missing of golden ornaments had taken place in one and the same transaction some time between 02.15 p.m. and 03.00 p.m. on 03.10.2009.

23. Now, the next question is, "Who was responsible for the above?" In order to prove the same, the prosecution relies only on circumstantial evidences. According to P.W.1, at 10.00 a.m. on 03.10.2009, A1 and A2 had come to his house and enquired about P.W.5, the brother of P.W.1. At that time, according to P.W.1, he saw A1 and A2 at his house for quite some time as they went on to enquire about P.W.5 and the conversation also went on for a quite considerable time. Thus, according to the prosecution, P.W.1 had sufficient time to notice the physical features of A1 and A2.

24. The learned counsel for the appellants would submit that this fact spoken by P.W.1 cannot be true. But, we find no force in the said argument for, even in Ex.P.1, P.W.1 has stated about the arrival of two persons. He had also mentioned about the approximate age of those two persons. Therefore, beyond all reasonable doubts, the prosecution has established that two persons had arrived in the house of the deceased at 10.00 a.m. on 03.10.2009 and engaged in some conversation with P.W.1 and the deceased. P.W.4 had also noticed them. But, unfortunately, P.W.4 was not allowed to participate in the test identification parade. Therefore, her evidence will not be of much help to the prosecution. The only other person, who had seen those two persons who had come to the deceased, is P.W.1. But, P.W.1 was not able to identify A2 in the test identification parade held. He had identified only A1. There is no explanation offered as to why P.W.1 was not able to identify

A2 in the test identification parade held. The fact that he was not able to identify A2 during test identification parade creates a doubt regarding the identification made by him of A2 in court during trial. However, from the evidence of P.W.1 and from the fact that he identified A1 in the test identification parade we have no hesitation to accept the case of the prosecution that A1 was one among the persons who visited the house of the deceased. Most probably, at that time, A1 along with the other would have noticed the deceased wearing gold ornaments.

25. The next circumstance is the visit of A1 and A2 to the house of the deceased at 12.00 noon. At that time, P.W.1 was not present. P.W.4 alone was present along with the deceased. P.W.4 has stated that A1 and A2 visited the house of the deceased and enquired with the deceased as to where P.W.1 had gone. The deceased told that P.W.1 had gone out and he would be returning only by 03.00 p.m. Then, they asked the deceased to fetch some water and after they drunk water, left the house of the deceased. To prove this fact, the prosecution relies only on the evidence of P.W.4. But, as rightly pointed by the learned counsel for the appellants, unfortunately, there was no test identification parade conducted allowing P.W.4 to participate in the same. There is no explanation offered as to why P.W.4 was not allowed to participate in the test identification parade held in which P.Ws.1 and 6 alone were allowed to participate. In the absence of prior test identification parade held and in the absence of any explanation for the same, we find it difficult to act upon the evidence of P.W.4 that two persons who visited the house at 12.00 noon were A1 and A2. To the extent that two persons visited the house of the deceased at 12.00 noon, we are inclined to believe P.W.4. But, we are not prepared to believe the identification of A1 and A2 made by P.W.4 in court during trial. Thus, the prosecution has proved this circumstance only to the extent that at 12.00 noon two persons visited the house of the deceased.

26. The next circumstance incriminating the accused with the crime is the evidence of P.W.6-Selvam. He has stated that on 03.10.2009, when he was proceeding to Somangalam village in his motor cycle around 03.00 p.m. he found A2 and A3 near Mettur grave yard which is situated some where near Somangalam Village. Both A2 and A3 were wearing lungi and shirt. They were found perturbed. Later on, he came to know that the deceased was done to death. He participated in the test identification parade held on 10.11.2009. He identified A2 and A3. From this evidence, the prosecution tries to prove that the accused were found moving in a suspicious circumstance at or about the time of occurrence some where near the place of occurrence. But, unfortunately,

this witness has not supported the case of the prosecution in full. He has stated that he found A2 and A3 near the grave yard at Mettur village. Absolutely, there is no evidence as to whether that grave yard is situated anywhere near the place of occurrence. Simply because A2 and A3 were found together some where, it cannot be held that they had some connection with the crime. This circumstance, in our considered view, is very weak and that, by itself, would not go to prove the guilt of the accused. Thus, the above circumstance can have only a corroborative value.

27. The next important circumstance is the arrest of A1 and A2 in the presence of P.W.9, the Village Administrative Officer on 23.10.2009 at 04.00 p.m. at Melathur Koot Road. According to P.W.21 and P.W.9, on such arrest, A1 gave a voluntary confession in which he disclosed the place where he had hidden a gold chain. The said disclosure statement is Ex.P.25. In pursuance of the said disclosure statement, he took P.W.21 and the witnesses to his house and from the place of hide out he produced a bag containing the gold chain (M.O.7). P.W.1 recovered the same under a mahazar. M.O.7, has been identified by P.W.1 as one of the stolen jewels. Thus, the prosecution has proved that M.O.7 the stolen property was in the possession of A1 on 23.10.2009. But, the learned counsel for A1 and A3 would assail this evidence by referring to the evidence of P.W.4. P.W.4 during cross examination has stated that within ten days after the death of the deceased, at the police station, she identified the stolen gold jewels. From this answer elicited from P.W.4, the learned counsel for A1 and A3 Mr.R.Vijayakumar would contend that the so-called arrest of the accused on 23.10.2009 cannot be true. He would further submit that from 13.10.2009 onwards, the accused would have been kept in illegal custody and the jewels would have been made ready for creating false records.

28. To draw support to his argument, the learned counsel for A1 and A3 made reliance on a judgement of this court in Arun Kumar and v. State, 2016(2) MLJ (Cr1) 152. That was a case where there was clinching evidence to show that the accused was kept in illegal custody long prior to the date of arrest shown by the police. In those circumstance, this court disbelieved the arrest, the voluntariness of the disclosure statement of the accused and the consequential recovery of the material objects. But, in the instant case, there is no such clinching evidence to even indicate that the accused were kept in illegal custody and they were not arrested on 23.10.2009 as it is projected by the prosecution. P.W.4 is, admittedly, an illiterate woman. At the fag end of her cross examination for the question asked as to when she had identified the gold jewels in the police station, she has stated that "after ten days". We cannot afford to attach

a precise meaning to the words used by her. She, being an illiterate woman, would have used only a loose language to say that she identified the jewels in the police station approximately within ten days after the death of the deceased. Therefore, this answer elicited by the accused from P.W.4 would not, in any manner, even remotely, indicate that the gold jewels were recovered within ten days from the date of occurrence. Therefore, this argument is rejected. We accept the prosecution evidence, that A1 was arrested only on 23.10.2009 and on his disclosure statement M.O.7-Gold Chain was recovered from his possession. At the same time, A2 was arrested and out of the disclosure statement made by him, a blood stained T-shirt and two sickles with blood stains (M.Os.11 to 14) were recovered. But, unfortunately, the prosecution has failed to prove the connection between these materials objects and the crime. Even P.W.6 was not called upon to identify M.Os.11 and 12. Thus, the recovery of M.O.11 to 14 from the possession of A2 would not in any manner be incriminating against him or against the other accused.

29. It is further stated that on the disclosure statement made by A2, a pair of gold jimiki (M.O.8) was recovered from P.W.11. It is the case of the prosecution that it was A2 who handed over M.O.8 to P.W.10 for the purpose of pledging. But, unfortunately, P.W.10 has turned hostile and he has not spoken the said fact. Thus, absolutely, there is no evidence, as of now, that M.O.8 was handed over to P.W.10 by A2. P.W.11 has stated that P.W.10 came and pledged M.O.8 at his shop. He has not stated that A2 came to the shop at any point of time even at the time of recovery of M.O.8. Thus, as of now, there is evidence only to prove that M.O.8 was pledged by P.W.10 with P.W.11. But, the fact remains that according to the evidence of P.W.21 and P.W.9, the receipt for pledging M.O.8 at the shop of P.W.11 was recovered only from A2. Ex.P.13 the said receipt has been proved through P.W.11. Ex.P.13 bears the signature of P.W.10. P.W.11 has stated that Ex.P.13-receipt was issued by him to P.W.10, evidencing the pledging of M.O.8. The said receipt (Ex.P.13) was in the possession of A2. But, A2 has not explained as to how did he come to possess the said receipt. We do not find any reason to reject the evidence of P.W.9 and P.W.21 that Ex.P.13 was recovered from the possession of A2. The fact that M.O.8 was under pledge with P.W.10 was disclosed only by A2. He only identified P.W.10 and thereafter, the shop of P.W.11 was identified and from P.W.11, based on Ex.P.13 -receipt, M.O.8- a pair of gold jimikis were recovered. Thus, but for the disclosure statement made by A2, the recovery of M.O.8 from P.W.11 would have occurred. Thus, the conduct of A2 in identifying P.W.10 and P.W.11 and the disclosure made that M.O.8 was pledged with P.W.11 coupled with the fact that Ex.P.13-pledge receipt was in the possession of A2 would all go

to clinchingly prove that M.O.8 was in the possession of A2 soon after the commission of theft for which A2 has got no explanation to offer at all. In the absence of any such explanation, we have to presume under Section 114 of the Evidence Act that A2 was also involved in the murder and robbery committed.

30. The learned senior counsel Mr.A.Raghunathan appearing for A2 would submit that missing of M.O.8 has not been mentioned in Ex.P.1. In our considered view, this argument deserves to be rejected inasmuch as when P.W.1 has identified M.O.8 as one of the stolen properties, during cross examination A1 to A3 have not disputed the same at all.

31. The next circumstance is the arrest of A3. A3 was arrested at 10.00 p.m. on the same day. He was identified by A1. On such arrest, he gave a voluntary disclosure statement in the presence of P.W.9 and another in which he disclosed the place where he had hidden M.Os.1 to 6. In pursuance of the same, they were produced by him from his pocket.

32. The learned counsel for the appellant would submit that it is quite unnatural that A3 would have readily had M.Os.1 to 6, the alleged stolen properties in his pocket. He would submit that normally the instinct of any thief would be to dispose of the stolen properties as early as possible. This argument is, though attractive, we are not persuaded by the same. Each individual will have his own behaviour and conduct in a given situation. We cannot draw uniformity in the conduct of thieves as soon as theft is committed. It may be true that some thieves, as soon as robbery is completed, would dispose of the stolen properties forthwith. There may also be thieves who may conceal the stolen properties. In the instant case, A3 may belong to the latter category. For his own purpose, when A3 was taking the gold jewellerys from one place to another, he had been caught red handed by the police. Therefore, the argument of the learned counsel for A3 that he would not have kept the jewels in his pocket readily cannot be accepted as a general proposition so as to reject the case of the prosecution. We believe the case of the prosecution as spoken by P.W.21 and P.W.9 and we hold that A3 was found in possession of M.Os.1 to 6 on 23.10.2009.

33. As we have already discussed, the death of the deceased and the removal of M.Os.1 to 8 had occurred in one and the same occurrence. The natural presumption arising there from is that the persons who committed robbery had caused the death of the deceased also. Here, in the instant case, the presumption

arising out of Section 114 of the Evidence Act that A1 to A3 who were found in possession of the stolen properties, have not explained their possession to the satisfaction of the court and, therefore, we are inclined to presume that they are the ones who committed the murder of the deceased and committed robbery of M.Os.1 to 8. Of course, this presumption is rebuttable. But, there is no evidence either direct or circumstantial, to rebut the said presumption. This unrebutted presumption coupled with the evidence of P.Ws.1 and 4, in our considered view, have gone to prove the guilt of A1 to A3 beyond any reasonable doubt.

34. So far as A1 and A2 are concerned, we do not find any infirmity in the conviction as well as the sentences imposed by the trial court and, therefore, they are liable to be confirmed. But, as far as A3 is concerned, there was no charge framed against him for offence under Section 392 r/w 397 of IPC. The trial court also did not give any finding that he was guilty of offence under Section 392 r/w 397 of IPC. When he was questioned in respect of sentence also there was no such question put to him that there was a finding that he was guilty of offence under Section 392 r/w 397 of IPC. But, strangely, the trial court has imposed sentence of rigorous imprisonment for seven years and to pay a fine of 5,000/- in default to suffer rigorous imprisonment for three months for offence under Section 392 r/w 397 of IPC as though there was a charge for the offence under Section 392 r/w 397 of IPC and also as though there was a finding that A3 was guilty of offence under Section 392 r/w 397 of IPC. Though the evidences let in by the prosecution clearly establish that A1 to A3 conjointly committed offence of robbery armed with deadly weapons since there was no charge for the said offence as against A3, we are not able to sustain the conviction imposed on A3 for the offence under Section 392 r/w 397 of IPC and the same is, therefore, liable to be set aside. However, for other offences, the conviction and sentences imposed on A3 are liable to be confirmed. So far as the offence of conspiracy is concerned, in general, conspiracy is hatched in secrecy and, therefore, direct evidence to prove the conspiracy may not be available in every case. In the instant case, the conduct of the accused in going twice to the house of the deceased, ensuring that the deceased was alone and that she was wearing valuable gold jeweleries and then moving to the house of the deceased to commit murder and to rob the gold jeweleries would all go to prove that there was conspiracy on the part of A1 to A3. Thus, in our considered view, the prosecution has proved all the charges made against the accused and thus, the trial court was right in convicting them.

35. Now, turning to the quantum of sentence for the proved charges, the trial court has imposed only proportionate

punishments which are just and reasonable. Thus, we do not find any reason to interfere with the quantum of sentence imposed by the trial court.

36. In the result, (a) CrI.A.No.432 of 2014: This criminal appeal is dismissed and the conviction and sentences imposed on the appellant/A2-Raji @ Srinivasan by the trial court are hereby confirmed.

Since it is reported that the appellant/A2 is on bail, the learned Sessions Judge-II, Kancheepuram, shall take steps to secure the presence of appellant/A2 so as to commit him to prison to serve the sentences imposed by this judgement.

(b) CrI.A.No.276 of 2014: This criminal appeal is partly allowed in the following terms:-

(i) It is dismissed against the 1st appellant/A1-Muthu @ Vembadu Muthu and the conviction and sentences imposed on him by the trial court are hereby confirmed.

(ii) So far as the 2nd appellant/A3-Selvam is concerned, the conviction and sentence imposed on him for offence under Section 392 r/w 397 of IPC alone is set aside and the conviction and sentences imposed on him for the other offences are hereby confirmed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk
To

1.The Sessions Judge-II, Kancheepuram,
Kancheepuram District

2.-do-Thro The Principal Sessions Judge,
Kancheepuram

3.The Inspector of Police,
Somangalam Police Station, Kancheepuram District

4.The District Munsif-cum-Judicial Magistrate
Sriberumbudur

5.The Chief Judicial Magistrate Chengalpattu

6.The Superintendent
Central Prison,
Vellore

7.The Director General of Police,
Mylapore Chennai-4

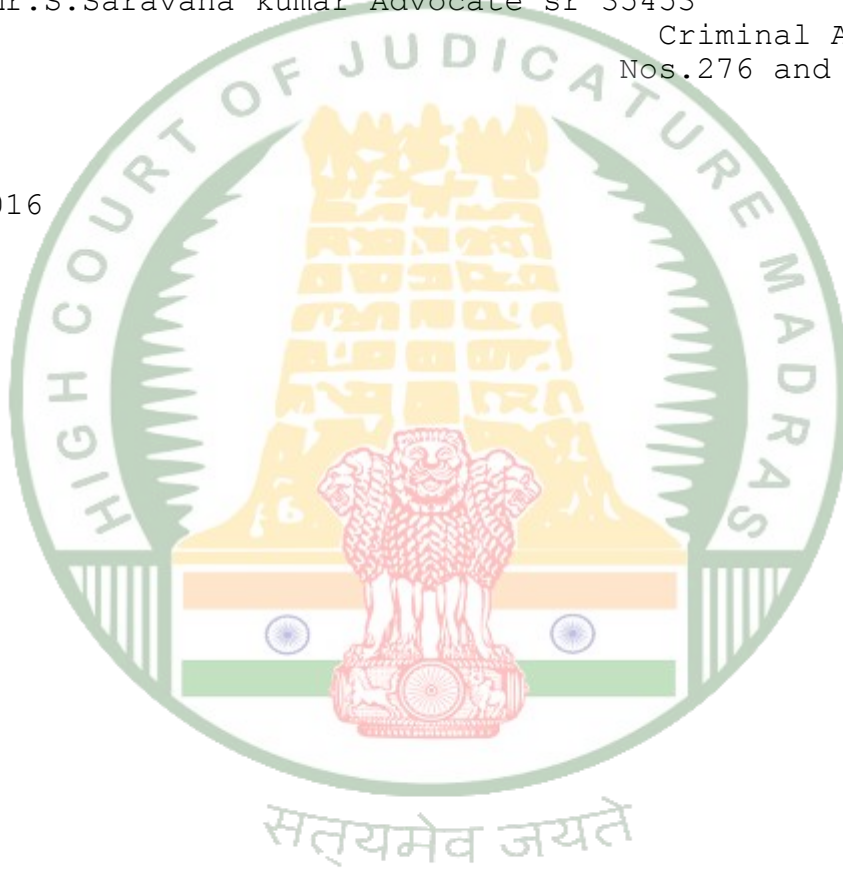
8.The District Collector Kancheepuram

9.The Public Prosecutor
High Court Madras

+1 cc to Mr.S.Saravana kumar Advocate sr 35453

Criminal Appeal
Nos.276 and 432 of 2014

aa31/08/2016



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