

Bail Slip

The Petitioners Viz., Mani, S/o. Govindasamy, aged 41 years, and Seeralan @ Sudhakar aged S/o. Krishnamoorthy, 28 years was already directed to release on bail in Crl.M.P.NO.1 of 2013 in Crl.A. NO.279/2013 dated 26.6.2013 now to be sentenced.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.279 of 2013

1. Mani
2. Seeralan

.. Appellants

- Vs -

The State rep. by its
The Inspector of Police,
Kottucherry Police Station,
Karaikal District,
(Cr.No.45 of 2012)

.. Respondent

Prayer:- Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Additional Sessions Judge, Pudhucherry at Karaikal in S.C.No.103 of 2012 dated 15.03.2013.

For Appellants : Mr.V.Sathish

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellants are the accused 1 and 2 in S.C.No.103 of 2012 on the file of the learned Additional Sessions Judge, Puducherry at Karaikal. They stood charged for offences under Sections 302, 382, 120-B, 201 r/w 34 I.P.C. By judgment dated 15.03.2013, the trial Court convicted them and sentenced them to undergo rigorous imprisonment for five years and pay a fine of Rs.2,500/- each and in default to undergo simple

imprisonment for two months for the offence under Section 120-B I.P.C.; to undergo imprisonment for life and pay a fine of Rs.5,000/- each and in default to undergo simple imprisonment for four months for the offence under Section 302 I.P.C. r/w 34 I.P.C.; to undergo rigorous imprisonment for five years and pay a fine of Rs.2,500/- each and in default to undergo simple imprisonment for two months for the offence under Section 382 I.P.C. r/w 34 I.P.C. and to undergo rigorous imprisonment for five years and pay a fine of Rs.2,500/- each and in default to undergo simple imprisonment for two months for the offence under Section 201 I.P.C. r/w 34 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

2.1. The deceased in this case was one Mrs.Rani. P.Ws.3 and 4 are the husband and daughter respectively of the deceased. They were all residing at Athangarai Street, Thondamangalam, Nedungadu, Karaikal. The deceased used to go for work as a Cook and also to do coolie work in the 100 days work scheme of the Government. She used to go in the morning and to return in the evening to her house. P.W.3 was also doing coolie work and he also used to go early in the morning and return in the evening. On 09.06.2012, at 05.00 a.m., in the usual course, P.W.3 had gone to work. At 09.30 a.m, the deceased left her house informing P.W.4 that she was going to Vadamattam school for taking photograph for issuance of smart card and then she would go to Chidambaram for cooking. She further stated that she would also go for 100 days work at Porayur on the next day.

2.2. It is the further case of the prosecution that she accordingly went to the school, where P.W.7 saw her. She was in the school between 10.00 a.m. and 12.00 noon. P.W.7 had also gone to the said school for taking photograph. At 12.00 noon, the second accused had came there in his motorcycle. The deceased told P.W.7 that she was going to Porayur along with the second accused. She gave the handbag to P.W.7 requesting her to handover the same to P.W.4. Thus, P.W.7 saw the deceased going in the motorcycle along with the second accused.

2.3. At the time when she was leaving the house of P.W.3, the deceased was wearing gold jewels viz., M.Os.4 to 16. P.W.7 also had seen the deceased wearing these jewels lastly when she left the school at 12.00 noon along with the second accused. Thereafter, the deceased did not return at all.

2.4. On 09.06.2012, in the evening, on returning home, P.W.3 came to know that the deceased had not returned from work. He enquired P.W.4 about the same. Then she went in search of the deceased to various places. She was not found. But no complaint was made in this regard.

2.5. P.W.2 is a resident of Virichikudi village. She also used to go for 100 days work under the Government. On 09.06.2012, she had gone for the said work. Along with 22 other women, she was doing desilting of Veerankovil channel. At about 10.30 a.m. for the purpose of answering nature's call, she went to a nearby secluded place surrounded by bushes. At that place, there is also a small pond. When she went near the pond, on its bank, to her shock, she found a dead body of a woman. The body was buried, but the hand and abdomen were exposed. She raised alarm, which attracted other ladies who were doing desilting work. Then they informed P.W.1 the Village Administrative Officer over phone about the same.

2.6. P.W.1 immediately rushed to the place of occurrence and confirmed that a dead body was found buried, but the right hand and abdomen were exposed. Since the face was buried, the identity could not be made out. P.W.2 and other women who were working there could not make out the identity of the deceased. Therefore, P.W.1 immediately went to Kottuchery Police Station and at 12.30 p.m. on 19.06.2012, he made a complaint under Ex.P1. P.W.24, the then Sub Inspector of Police, on receipt of the said complaint under Ex.P1 registered a case in Crime No.45 of 2012 under Section 174 Cr.P.C. It was recorded that a case relating to one unknown female dead body.

2.7. P.W.24, took up the case for investigation and rushed to the place of occurrence. He had summoned P.W.19 the police photographer to take photographs at the place of occurrence. P.W.19 took a number of photographs from various angles. P.W.24 then prepared an observation mahazar and a rough sketch at the place of occurrence, in the presence of P.W.5 and another witness. Then he made a request to the Executive Magistrate cum Tahsildar to arrive at the scene of occurrence for exhuming the body. Accordingly, P.W.25 arrived at the place of occurrence at 02.15 p.m. On the request made by P.W.24, P.W.22 Dr. Shanmugavelu also arrived at the place of occurrence. In the presence of witnesses, P.W.25 the Executive Magistrate exhumed the dead body. P.Ws.3 and 4 on hearing the information that the dead body was found half buried also had arrived at the place of occurrence. Since the body was exhumed P.W.19 took further photographs. On the right hand there was a tattoo mark reading as Rani Kannaiyan. Similarly, on the left forearm there was a tattoo mark mentioning MGR and also a two leaves symbol. P.Ws.3, 4 and other family members of the deceased identified the dead body as that of the deceased.

2.8. On the dead body red colour saree (M.O.1), Jacket (M.O.2) and Green colour petticoat (M.O.3) were found. They were all identified by P.Ws.3 and 4 as that of the deceased. P.W.24 recovered M.Os.1 to 3 from the body of the deceased under a mahazar in the presence of witnesses. On the body a nose screw without screw was found (M.O.4).

2.9. P.W.22 conducted autopsy on the body of the deceased on the same day at 04.45 p.m. He found the following injuries:

"External Injuries: Conjunctive congested, pupils dilated, rigor mortis has passed off, body decomposed foul smelling discoloured black anterior portion of chest including sternum found missing, tips of fingers and toes bluish purple in colour, a portion of the back (sic) on the posterior aspect and gluteal region shows features of early adipose formation, scalp hair loosened but in situ. A black * mark 14x2 cm with marginal bruising appreciable on the anterior aspect of neck above the level of thyroid cartilage, running horizontally.

Internal examination: Head (Scalp, skull, meninges, brain and spinal cord) Scalp - contusion 6x4 cm on left frontal region, skull intact, meninges intact, brain liquified due to decomposition.

Neck, thoracic cavity, lungs and heart: Paratyphoid haemorrhages and hyoid found fractured at left body and greater horn subcutaneous tissue ligature mark shows bruising, lungs decomposed, on cross section fluid blood present, heart flabby, contained scanty fluid blood.

Abdomen and pelvis - Stomach contained 100 ml odour less fluid, unusual smell, mucous congested, liver spleen, kidney, intestine decomposed and seen as a single black mass, bladder empty"

He gave opinion that the death was due to asphyxia due to strangulation. Ex.P33 is the postmortem certificate.

2.10. On 21.06.2012, at about 05.00 a.m. he took the second accused into his custody near Thondaimandalam Mukuttu junction out of suspicion. The second accused was found in possession of M.O.18 motorcycle. He brought him to the police station and during interrogation, he expressed his intention to confess. At his request, P.W.15 the Village Administrative Officer had gone to the police station along with one Village Assistant and one Mr.Velmurugan, who was the Village Administrative Officer of Virichikudi Village.

2.11. The second accused was in possession of M.O.18 motorcycle, that was seized by P.W.24. Then P.W.24 produced both the accused before the Inspector of Police. He handed over the case diary also to the Inspector of Police as the offence turned out to be a murder.

2.12. At the police station, P.W.26, the Inspector of Police arrested both the accused. The first accused, at 08.30 a.m. gave a voluntary confession and at 10.15 a.m. the second accused gave a voluntary confession. P.W.26, reduced both the confession into writing. At 12.00 noon, he seized the cellphones with sim cards from the accused i.e. one cellphone from each accused. Then both the accused took the police and the witnesses to the place of hideout and produced a spade with handle (M.O.20) and crowbar (M.O.19). P.W.26, recovered them under a mahazar. Then both the accused took the police and the witnesses near Joseph Teacher Training College, there, from the bottom of a neem tree produced a red colour plastic bag containing gold jewels. P.W.26 recovered the same. Then at 03.00 p.m., the first accused took the police and the witnesses to the kitchen of the college where he was working and produced a pawn receipt. In pursuance of the same, he took the police and the witnesses to the pawn shop where P.W.26 recovered a pair of gold ear studs which were under pledging. P.W.26 recovered the same under a mahazar. Then he altered the case under Section 392m 382m 120-B r/w Section 34 I.P.C. On returning to the police station, he forwarded the accused to the Court and handed over the material objects also to the Court. On completing the investigation, he laid chargesheet against the accused.

2.13. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 26 witnesses were examined, 51 documents and 23 material objects were marked.

2.14. Out of the said witnesses, P.W.1 the Village Administrative Officer has stated that he found a half buried dead body of the deceased at 11.30 a.m. on 19.06.2012 and then he made a complaint to the police. P.W.2 has stated that when he went for 100 days work, he found the dead body of the deceased near a bush by the side of the pond. He informed P.W.1 immediately and thereafter, P.W.1 came to the place of occurrence and made a complaint to the police. P.W.3 the husband of the deceased as stated that on the day of occurrence, he left for his work early in the morning. But the deceased had not gone for work at that time and he has further stated that at that time, the deceased was found wearing a red colour saree and a orange colour blouse. He has further stated that when he saw the dead body, at about 04.30 p.m. and 05.00 p.m., on 19.06.2012, he did not find the gold jewels viz., M.Os.4 to 16 on the body of the deceased. He has identified M.Os.4 to 16 as the personal belongings of the deceased which were worn by the deceased lastly. P.W.4 is the daughter of the deceased, she has stated that on 09.06.2012 at 09.30 a.m. the deceased left for Vadamattam School for taking

photograph for issuance of smart card. She has further stated that from there she would go to Chidambaram and would return next day to go for 100 days work. She has further stated that she did not returned in the evening. She went in search of the deceased but she could not find her. She has further stated that the dead body of the deceased was found on 19.06.2012. At that time, the jewels worn by the deceased M.Os.4 to 16 were found missing. She has identified M.Os.4 to 16 as the personal belongings of the deceased and were worn by the deceased lastly. P.W.5 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence and the recovery of the material objects. P.Ws.6, 8, 9, 10 and 16 have turned hostile and they have not stated anything incriminating. P.W.7 is an important witness for the prosecution. According to her, on 09.06.2012, at 10.00 a.m. she had gone to the Vadamattam school for taking photograph for issuance of smart card. At that time, the deceased also came there for taking photograph, after that, at 12.00 noon, the deceased gave the handbag belonging to her to P.W.7 and wanted here to handover the same to P.W.4. stating that she was going to Porayur, according to this witness, the deceased went along with the second accused in his motorcycle. Thus, according to the case of the prosecution, the deceased was lastly seen alive by P.W.7 at 12.00 noon on 09.06.2012 and thereafter she was not seen at all. P.Ws.11 and 12 have stated that on 19.06.2012, at the time of exhumation of the body they were present and they have spoken about the same. P.W.13 is a pawn broker, he has stated that on 16.06.2012 both the accused came to his shop. The first accused pledged M.O.16 for a sum of Rs.13,000/- and M.O.17 is the receipt issued by him. M.O.6 is the pawn receipt book, in which the signature of the first accused was obtained by him. He has further stated that on 23.06.2012, the first accused had brought the police to his shop and on M.O.17 being produced, he returned M.O.16 the pair of gold jewels. P.W.14 has stated that the motorcycle in question was originally owned by him and he sold away the same to the second accused. P.W.15 has spoken about the confession of the accused made to him and the consequential recovery of material objects including the personal belongings of the deceased. P.W.17 is the Motor Vehicle Inspector has stated that the motorcycle in question stood in the name of P.W.14. P.W.18 is a gold appraiser and after the jewels were seized, he appraised the same. P.W.19 is the police photographer, who has stated that he took photographs of the dead body at the place of occurrence. P.W.20 the Surveyor has spoken about the ownership of the land where the dead body was found half buried. P.W.22 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.23 is the nodal officer of Aircel Limited, he has stated that he handed over the call details for the cellphone Nos.9788159643 and 9524526841 for the period from 01.06.2012 to 21.06.2012. The former cell number belongs to the first accused and the later belongs to the second accused. P.W.24 has spoken about the registration of the case and the primary investigation done by

him. P.W.25 has spoken about the exhumation of the body and P.W.26 has spoken about the investigation done by him and the final report filed by him.

2.15. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor mark any document on their side. Having considered all the above, the trial Court convicted the appellants as detailed in the first paragraph of this judgment and that is how, they are before this Court with this appeal.

3. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

4. It is a case based on circumstantial evidence. At the outset, we should say that it is well settled that in a case based on circumstantial evidence, the prosecution is bound to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. With this broad principle in mind, let us go into the circumstances projected by the prosecution.

5. The first and the foremost circumstance is that the deceased left her house on 09.06.2012 at 09.30 a.m. to go to Vadamattam school for the purpose of taking photograph for issuance of smart card. At that time, she was wearing a red colour saree and orange colour blouse. This has been spoken by P.W.3 also. It is also in the evidence of P.Ws.3 and 4 that the deceased was wearing M.Os.4 to 16 (gold jewels) at the time when she left. Thereafter, P.W.7 had seen the deceased lastly at Vadamattam School when she took photograph for issuance of smart card. Thereafter, according to P.W.7, the deceased handed over her handbag to P.W.7 with a request to her to hand over the same to P.W.4 telling that she was going to Porayur she went in the motorcycle along with the second accused. Thus, the deceased was lastly seen alive at 12.00 noon on 09.06.2012. We do not find any reason to reject the evidence of the prosecution in respect of this strong circumstance.

6. Thereafter, the deceased was not seen alive anywhere. P.Ws.3 and 4 went in search of the deceased, but they could not find her anywhere. On 19.06.2012, P.W.2, who had gone for 100 days work found the dead body of the deceased near a pond at Pullainthopu village. The body was half buried i.e. her right hand and the stomach were exposed. She immediately informed P.W.1 and P.W.1 went to the said place and found the dead body of the deceased at 11.30 a.m. P.W.2 had seen the

dead body at 10.30 a.m. on 19.06.2012. Thus the prosecution has clearly established that the deceased had died sometime between 12.00 noon on 09.06.2012 and 10.30 a.m. on 19.06.2012.

7. P.W.22 Dr.Shanmugavelu who conducted autopsy on the body of the deceased has found number of injuries. He opined that death was due to asphyxia due to strangulation. Thus, the prosecution has clearly established that the death of the deceased was due to homicidal violence.

8. Now the question is who caused the death of the deceased. In order to prove the same, the prosecution relies on few more circumstance. The first one is the evidence of P.W.7. P.W.7 has stated that on 09.06.2012 at 12.00 noon, from Vadamattum school the second accused took the deceased in his motorcycle under the pretext of going to Proyur. Though this witness has been cross examined at length on this aspect, we do not find any reason to reject this part of the evidence. P.W.7 has got no axe to grind against the accused. The evidence of P.W.7 is so cogent and convincing. From this, we conclude that the prosecution has proved that the deceased was lastly taken only by the second accused on 09.06.2012 at 12.00 noon.

9. It is in the evidence of P.Ws.3 and 4 that the jewels worn by the deceased viz. M.Os.4 to 16 were found missing on the body. It is inferable that the murder and robbery had been committed in one and the same transaction. After the body was exhumed, both the accused were arrested by P.W.24 on 21.06.2012. At that time, the second accused was in possession of the motorcycle in question. It was only in this motorcycle the second accused had taken the deceased. According to the evidence of P.W.14, this motorcycle was originally owned by him and from him, the second accused purchased and he was using the same. P.W.17 has stated that the said motorcycle stood in the name of P.W.14. This circumstance though proved, in our considered view, is a weak piece of circumstance because P.W.17 has not identified the said motorcycle as the one in which the deceased was taken by the second accused.

10. On being produced before P.W.26 by P.W.24, both the accused were arrested and they confessed one after the other. Out of the said confession, at first M.O.19 the crowbar and M.O.20 Spade with handle were recovered. But the connection between these two instruments with the crime has not been established and therefore, the recovery of M.Os.19 and 20 is irrelevant. But in pursuance of the confession, the first accused produced the pawn receipt (M.O.17) evidencing the pledging of M.O.16 gold jewel with the pawn broker viz., P.W.13. P.W.13 has stated that on 16.06.2012, both the accused came to him and the first accused pledged M.O.16 for which M.O.17 receipt was issued. He has further stated that as per the business practice the signature of the first

accused was obtained in pawn receipt notebook vide Ex.P7, which contained the signature of the first accused (vide Ex.P6). From the evidence of P.W.12, the prosecution has established that M.O.16 was found in the possession of both the accused on 16.06.2012 and they pledged the same in the name of the first accused.

11. The learned counsel for the appellant would try to assail the evidence of these witnesses on few very weak grounds. The first one is that according to the learned counsel, there is no signature of the first accused found in the pawn receipt. This argument is liable to be rejected for P.W.13 has categorically stated that it was his business practice to obtain signature of the person who pledges the jewel only in the pawn receipt book and not in the pawn receipt. We do not find any reason to reject the said explanation. Further, this witness has no axe to grind against the accused. Ex.P.7 the receipt book which was maintained in the regular course of business deserves acceptance. P.W.13 has stated that on 21.06.2012, the accused had brought P.W.26 and witnesses to his shop and on the pawn receipt being produced, he returned M.O.16 to the police and for the recovery of the same in the mahazar, he also signed. Thus, the evidence of P.W.13 clearly establishes that these two accused were found in possession of M.O.16 on 16.06.2012.

12. Then in pursuance of the said confession, both the accused took the police and the witnesses to a place near St.Joseph Teacher Training College and from the bottom of a neem tree, they produced a red colour plastic bag containing 10 items of gold jewels. They have been identified as that of the deceased which were stolen away from her. P.Ws.3 and 4 have identified the jewels as M.Os.4 to 16. This fact has been spoken by P.Ws.15 and 26. We find no reason to reject the evidence of these witnesses. Even the learned counsel for the appellants is not able to point out any infirmity so as to create doubt in the case of the prosecution in respect of the recovery of valuable gold articles (M.Os.4 to 16) which were stolen away from the deceased.

13. From the recovery of these material objects from the accused, as provided in Section 114 of the Evidence Act, the presumption that arises is that these accused had committed the murder and have stolen away M.Os.4 to 16. This presumption is rebuttable. But, in our considered view, the accused have not rebutted the said presumption either by direct evidence or by means of any other circumstances brought on record. Thus, the un rebutted presumption arising out of the possession of the stolen properties and from the evidence of P.W.7 that the deceased was lastly taken by the second accused in his motorcycle coupled with all the other proved facts which we have already dealt with, we hold that the prosecution has clearly proved these circumstances which unerringly point to the guilt of the accused. There is no

other hypothesis which is inconsistent with the guilt of the accused. Thus, we hold that the prosecution has proved the case beyond reasonable doubts and thus, the trial Court was right in convicting the accused for the offence of murder. The trial Court ought to have convicted the appellants for robbery, but instead the trial Court has convicted them only for the offence under Section 382 I.P.C. which is lesser in gravity. We do not want to interfere with the same. Therefore, we confirm the offence under Section 382 I.P.C. r/w Section 34 I.P.C. also.

14. So far as the charge of conspiracy is concerned, conspiracy is a matter of inference. The trial Court has given cogent reasons to presume that there was conspiracy between the accused 1 and 2 to commit murder of the deceased and commit robbery. We find no reason to interfere with that also. Thus, we hold that the trial Court was right in convicting the accused as stated in the first paragraph of this judgment.

15. Now turning to the quantum of punishment, the Trial Court has imposed a very reasonable and just sentence which does not require any interference at the hands of this Court. Thus, we do not find any merit in this appeal.

16. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the accused 1 and 2 by the learned Additional Sessions Judge, Puducherry at Karaikal, in S.C.No.103 of 2012 dated 15.03.2013, is hereby confirmed and the bail bond shall stands cancelled. The Trial Court shall take steps to secure the accused 1 and 2 and commit them to prison so as to undergo the remaining sentence.

सत्यमेव जयते

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msh/kk

To

1. The Additional Sessions Judge,
Puducherry at Karaikal.
2. The The Inspector of Police,
Kottucherry Police Station,
Karaikal District.
3. The Judicial Magistrate No.II, Karaikal
4. The Chief Judicial Magistrate Pondicherry (for information)
5. The Superintendent Central Prison, Trichy.
6. The Director General of Police Mylapore Chennai.
7. The Public Prosecutor,
Madras High Court.

+1cc to M/S.T.P. Senthilkumar, Advocate, S.R.No.21156

+1cc to the Government Pleader, S.R.No.20429

PPA(CO)
EU(21/06/2016)

CrI.A.No.279 of 2013

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