

Bail Slip

The Following Accused were released on bail as per order of this court:-

1	Manikandan-A2	01/07/15	MP.No.1 of 2013 Crl.A.No.619/2013
2	Manikandan @ Kalaimani-A	28.04.2015	MP.No.1/2013 in Crl.A.No.385/2013
3	Siva-A4	27.06.2013	MP.NO.1 of 2013 in Crl.A.No.371 of 2013
4	Veerappan-A5	30.4.2013	MP.NO.1 of 2013 in Crl.A.No350 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2016

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal Nos.582, 619, 385, 371 & 350 of 2013

Rajadurai .. Appellant/A.1 in Crl.A.No.582/2013

Manikandan ... Appellant/A.2 in Crl.A.No.619/2013

Manikandan @ Kalaimani .. Appellant/A.3 in Crl.A.No.385/2013

Siva .. Appellant/A.4 in
Crl.A.No.371/2013

Veerappan .. Appellant/A.5 in Crl.A.No.350/2013

vs

The State, rep. By its
The Inspector of Police,
Virudhachalam Police Station,
Cuddalore District.

(Crime No.51 of 2012)

.. Respondent in all Crl.As

Common Prayer in all Criminal Appeals:- These Criminal Appeals have been filed under Section 374 (2) Cr.P.C., against the judgment of the learned Sessions Judge, District Mahila Court, Cuddalore in S.C.No.130 of 2012 dated 22.04.2013.

In Crl.A.No.582 of 2013:-

For Appellant :Mr.P.G.Perumal Priyan
For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.619 of 2013:-

For Appellant :Mr.M.L.Ramesh
For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.385 of 2013:-

For Appellant :Mr.G.Ramkumar
For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.371 of 2013:-

For Appellant :Mr.S.Prabhakaran
For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.350 of 2013:-

For Appellant :Mr.Prasanna Venkates
For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

(Common Judgement of the Court was delivered by S.Nagamuthu.J)

The appellant in Crl.A.No.582 of 2013 is A.1; the
appellant in Crl.A.No.619 of 2013 is A.2; the appellant in

Crl.A.No.385 of 2013 is A.3; the appellant in Crl.A.No.371 of 2013 is A.4 and the appellant in Crl.A.No.350 of 2013 is A.5 in S.C.No.130 of 2012 on the file of the learned Sessions Judge, Mahila Court, Chennai. The trial Court framed as many as six charges as detailed below:-

Charges	Accused	Section of law
Charge No.1	Accused 1 to 4	120 (B) I.P.C.,
Charge No.2	A.1	376 I.P.C.,
Charge No.3	A.1	302 I.P.C.,
Charge No.4	A.1 to A.4	392 r/w 397 I.P.C.,
Charge No.5	A.2 to A.4	302 r/w 34 I.P.C.,
Charge No.6	A.5	414 I.P.C.,

By judgment dated 22.04.2013, the trial Court convicted all the accused under all the charges and sentenced them as detailed below:-

Accused	Section of law	Sentence
A.1	120 (B) I.P.C.,	Rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years
	392 r/w 397 I.P.C.,	Rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for one year

Accused	Section of law	Sentence
A.2 to A.4	120(B) I.P.C.,	Rigorous imprisonment for two years
	302 r/w 34 I.P.C.,	Imprisonment for life and to pay a fine of Rs.5,000/- each in default to undergo rigorous imprisonment for two years
	392 r/w 397 I.P.C.,	Rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for one year
A.5	414 I.P.C.,	Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.

The trial Court has ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with these Criminal Appeals.

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

The deceased in this case was one Mrs.Vimala. P.W.1 is her husband. P.W.1 was working as a Salesman in a private concern. The deceased was doing cloth business at her house itself. P.W.1 was assisting her in the said business. It was the practice of P.W.1 to leave the house for his work in the morning at 9.00 am and to return to his house around 6.30 pm. On 20.01.2012, in the usual course, P.W.1 had left the house for his work leaving the deceased alone at his house.

3.Thereafter, around 12.45 pm on the same day, the deceased called him over phone and informed that A.3 who was already known to the deceased and P.W.1 had come to their house for the purpose of purchasing clothes in connection with a function at his house. The deceased further told that A.3 had selected the clothes and she gave the details of the items selected by him to P.W.1. P.W.1 calculated the price of those

items and informed the deceased to collect Rs.8,525/- as the price for the clothes and to sell the same to A.3. Then within a short while, the deceased again called P.W.1 over phone and informed that A.3 had taken only two shirts promising to visit again to purchase rest of the clothes. P.W.1 instructed the deceased to sell the clothes to A.3 only after receiving the cost.

4. Around 4.00 pm on the same day, P.W.1 tried to contact the deceased through her cell phone. But, the cell phone of the deceased was in a switched off mode. Then, at around 6.30 to 7.00 pm, as usual, P.W.1 returned to his house. He was in possession of one of the keys for the outer gate of the house. With that key, he opened the lock of the outer gate and entered into the premises but, the main door of the house was found locked. Through the outside electricity switch, he put on the lights outside and went to the nearby Tea Shop, believing that the deceased had gone elsewhere in connection with some work. Even after, he returned from the Tea shop for a long time, the deceased did not return. P.W.1 therefore, informed P.W.2, a friend of him about the same. P.W.2 immediately rushed to the house of P.W.1 at about 9.45 pm. When they enquired at the house of a neighbour as to whether the deceased had given a key of the main door of the house, they told in the negative. Therefore, P.Ws.1 & 2 got perplexed. By using a hammer then they broke open the lock of the main door of the house. When they entered into the house, they found that there were blood stains on the floor. The bureau was found opened and the wife of P.W.1 was not however seen. When P.W.1 searched for her, he found the deceased lying dead underneath the cot, in a pool of blood. The clothes and other materials kept in the bureau were found lying outside. The jewels kept in the bureau, the keys of the house and the keys of the bureau were found missing. There was a long cut injury on the neck of the deceased. Immediately, P.W.1 went to the Virudhachalam Police Station and made a complaint at 11.30 pm on 20.01.2012.

5. P.W.17, the then Sub Inspector of Police on receipt of such complaint, registered a case in Crime No.51/2012 for offence under Sections 392 & 302 I.P.C. Ex.P.25 is F.I.R. He forwarded both the complaint (Ex.P.1) and the F.I.R., (Ex.P.25) to the Court and which were received by the learned Judicial Magistrate at 10.45 am on 21.01.2012. The case was taken up for investigation by P.W.18. He proceeded to the place of occurrence, after leaving a request to the Finger Print Expert to come to the place of occurrence. At 1.00 am on 21.01.2012, on reaching the place of occurrence, P.W.18 prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. The Finger Print Expert who had already arrived, made a thorough search in the place of occurrence and lifted two chance finger prints from the bureau of the house. The Police Photographer arranged by P.W.18 came to the place of occurrence and took photographs

from various angles at the place of occurrence. A Police sniffer dog was brought to the place of occurrence on the request of P.W.18. But, the same turned futile, as it could not get any clue for the investigation. P.W.18 recovered blood stained cement plasters and the ordinary cement plasters from the place of occurrence under a mahazar. Then, he conducted inquest on the body of the deceased in the presence of panchayatdars and prepared Ex.P.27, Inquest Report. Then, he forwarded the body for post mortem. P.W.16 conducted autopsy on the body of the deceased on 21.01.2012 at 1.30 pm. He found the following injuries:-

"External injuries noted:- 1.All finger nails cyanosed.
2.Right eye - upper eye lid contused - size 4cm x 1cm x 0.5 cm with conjunctival haemorrhage.
3.Laceration of abrasions - (a) 0.5 cm - upper part of front of neck - 1cm below the chin.
4.Curved abrasions (a) 0.5 cm long 1 cm below the middle of right lower jaw. (b) 1.5 cm long - centre of neck - 4 cm above the suprasternal notch (c) 1cm long - left side of neck - 8 cm from angle of left mandible (d) 1 cm long - left side of neck - 7cm from angle of mandible.
5.Contusion of size 2cm x 1cm x 0.5 cm over right mandible
6.Lower lip contused right side - 2cm x 1cm x 0.5 cm. Tip of tongue 0.5cm protruding between the teeth
7.Contusion of size 9cmx2cmx1cm over middle and right side of forehead.
8.Contusion of left chest - upper part - 2 in number 8cm x 1cm x 0.5 cm 16cm x 6cm x 0.5 cm one below the other.
9.Contusion of size 8cm x 2cm x 0.5 cm lower part of left chest.
10.Contusion of size 11 cm x 2cmx0.5 cm over left chest - lower part and upper abdominal wall - lateral aspect.
11.Contusion of size 4cm x 1cm x 0.5 cm over medial aspect of left upper thigh."

Ex.P.24 is the post mortem certificate. P.W.16 gave opinion that the death was due to strangulation and also due to the head injuries. He further opined that the death would have occurred 24 hours prior to the post mortem.

6.P.W.18 recovered the blood stained clothes from the body of the deceased. When the investigation was in progress, on 24.01.2012, at about 5.30 pm, it is alleged that A.3 and

A.4 appeared before P.W.8 who was the then Village Administrative Officer of Virudhachalam. According to him, A.3 & A.4, were already known to him. On such appearance, A.3 & A.4 told him that along with A.1 and A.2 they had killed the deceased and in connection with the same, they wanted to give confession. They also told that they committed robbery of the jewels from the house of the deceased. P.W.8 warned them that if any such confession was given, that would be used against them and which would result in getting them punished by the Court. A.3 responded saying that he would face the case by engaging a good Advocate. A.3 further told that if, he went to the Police Station to surrender, they would assault him and therefore, he had come to P.W.8 to surrender. After these long conversation, P.W.8 allowed A.3 to confess. A.3 accordingly gave a voluntary confession which P.W.8 reduced into writing. Ex.P.7 is the said extra judicial confession given by A.3. P.W.8 did not record any extra judicial confession from A.4. Thereafter, along with the said report, he took A.3 and A.4 to the Police Station and produced them before P.W.18 at 9.00 pm on 24.01.2012. On such production, P.W.18 arrested A.3 & A.4 at 10.00 pm. In the presence of the same witnesses, A.3 gave a voluntary confession, in which, he disclosed the place where he had hidden the gold jewels, in the cashew nut farm of one Mr.Viswanathan. In pursuance of the same, he took Police and the witness to the said place and produced M.Os.1 and 10. P.W.18 recovered the same under a mahazar. Similarly, A.4 also gave a voluntary confession in which, he disclosed the place where he had hidden a Tata Sumo Car bearing registration No.TN 20 AK 4105 and jewels and the other material objects. In pursuance of the same, he took P.W.18 and the another witness to South of his house and produced a gold bangle weighing 3 soverigns (M.O.2) and the other material objects viz., sarees and shirts. P.W.18 recovered the same under a mahazar. On returning to the police station, he forwarded A.3 and A.4 to Court for judicial remand and also handed over the Material Objects to Court.

7. On 26.01.2012, at 2.00 am, at Erumanur Village, when P.W.18 was on vehicle check up, the Tata Sumo bearing registration No.TN 49 H 1666 was found moving. P.W.18 intercepted the same. A.1, A.2 & A.5 were in the Car. When P.W.18 interrogated, A.1 on his own, volunteered to give a confession. P.W.18 recorded the said confession in the presence of P.W.11 and another witness. P.W.18 recovered the said Car (M.O.24) under a mahazar. A.1 produced a knife from the said Car. P.W.18 recovered the same vide M.O.25. There were blood stains found on the knife. The cutting portion of the knife was slightly bent. A.1 further produced a key punch with two keys (M.O.16); yet another key punch with 5 keys (M.O.17); one Nokia cell phone (M.O.32) and yet another cell-Samsung cell phone (M.O.33). Then he produced the jewels viz., three row chain (M.O.3); a bracelet (M.O.14); a three stone nose pin and two nose pins (M.O.4 series) three rings (M.O.5 series), a thali (M.O.12); a thali chain (M.O.13). P.W.18

recovered all these Material Objects under a mahazar and the original sale deed (M.O.15) pertaining to the house of P.W.1 and the deceased. Then P.W.18 altered the case into one under Sections 392, 302, 376 and 414 I.P.C., and submitted an alteration report to the Court.

8.P.W.18 forwarded A.1 for medical examination. P.W.15 - Dr.Saravanan, conducted medical examination on A.1 and certified that he was capable of performing penile sex with a woman. Then, based on the confession of A.1, on 02.04.2012, P.W.18 came to know that some other jewels had been given by A.1 to P.W.12. P.W.12, in turn, informed that he had pledged those jewels at Muthoot Finance, Veeraganur Village. In pursuance of the same, on 02.04.2012, at 11.00 am, P.W.18 recovered the jewels (M.Os.6,7,8,9,10,11) under a mahazar. He examined the officials of the Muthoot Finance and recorded their statements. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains in all the Material Objects including the knife recovered from A.1. On completing investigation, P.W.18 laid charge sheet against all the five accused.

9.Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case of the prosecution, as many as 18 witnesses were examined and 28 documents were exhibited besides 33 Material Objects.

10.Out of the said witnesses, P.W.1 has stated that on the day of occurrence, he left the house in the morning to his work spot. He has further stated by around 12.45 pm, the deceased told over phone and informed him that A.3 had come to purchase clothes. He calculated the price of the clothe items and informed the deceased to collect a sum of Rs.8,525/- and then give the cloth items to A.3. Again after some time, according to P.W.1, the deceased spoke to him and told him that A.3 had taken only two shirts and promised her to come again to purchase rest of the items. He has further stated that at 4.00 pm, when he tried to contact the deceased over cell phone, her cell phone was in a switched off mode. He has further stated that between 6.30 and 7.00 pm, he returned home and the house was found locked. He opened the main compound gate of the house with the key in his possession. Till 9.45 pm, the deceased did not come. He informed P.W.2 and on his arrival, both of them broke open the main door of the house and they found the deceased underneath the cot lying in a pool of blood and there were injuries on the body of the deceased. P.W.1 has further stated about the missing of articles viz., M.Os.1 to 17 from the house. He had identified the said Material Objects as stolen properties. P.W.2 a family friend of P.W.1 has stated that on receiving message from P.W.1, he rushed to the house of P.W.1 and by using a hammer, they broke open the lock of the main door and they found the deceased underneath the cot lying in a pool of blood with injuries.

P.W.2 has further stated about the complaint made by P.W.1 to Police. P.W.3 who is the brother of P.W.1 has stated that at or about the occurrence, he found A.1 to A.3 moving towards the house of the deceased. When he enquired them, they told that they are going to the house of the deceased to purchase clothes. P.W.4 is the yet another brother of P.W.1. He has stated that he heard about the occurrence and then came to the place of occurrence and he has stated on the basis of only hearsay information. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has spoken about the preparation of observation mahazar and the rough sketch, in the place of occurrence and the recovery of material objects from the place of occurrence. P.W.7 is the Scientific Expert who examined the material objects sent to him. He has stated that he found human blood stains in all the material objects including the knife recovered from A.1 (M.O.25).

11.P.W.8, the Village Administrative Officer of Virudhachalam has stated that on 20.01.2012, A.3 and A.4 have appeared before him and they informed him that they had committed murder of the deceased and also committed robbery in the house of the deceased along with A.1 and A.2. P.W.8 has further stated about the fact that A.3 gave a voluntary confession which he reduced into writing. The said confession is Ex.P.7. However, he did not record any confession from A.4. He has further stated that he has produced A.3 & A.4 to P.W.18 and he has also stated about the disclosure statements made by A.3 & A.4 to P.W.18 and the consequential recoveries of the material objects at their instances.

12.P.W.9 is the Finger Print Expert. He has stated that on the request made by P.W.18, he rushed to the place of occurrence and thoroughly examined the entire house for chance finger print at last, he found two chance finger prints on the left side door of the bureau in the bed room of the house where the deceased was lying dead. He marked the same as Exs.M.1 and M.2. He took photographs of the same. He compared the said chance finger prints with the finger prints of the inmates of the house including P.W.1 and P.W.2. However, they did not tally. Thereafter, when he compared the same the chance finger prints with the finger prints of the culprits available in the Finger Print Bureau, he found the finger print of A.1 tallied with the chance finger print (Ex.M.2) The said finger print of A.1 had been taken and preserved in connection with the case in Crime No.19/2011 under Sections 302 & 379 I.P.C., on the file of the Edaikal Police Station. In this connection, he submitted a report to P.W.18 under Ex.P.14. After the arrest of A.2, according to him, the finger print taken from A.2 was compared by him which tallied with the chance finger print (Ex.M.1) taken from the place of occurrence. In this regard, he submitted yet another report under Ex.P.15. Out of the two chance finger prints taken from

the place of occurrence, one tallied with the admitted finger print of A.1 and the other tallied with the admitted finger print of A.2.

13.P.W.10 is a Mechanic by profession working at Virudhachalam. He has stated that on 20.01.2012, A.3 had left his motor cycle to him for repair and then, he took it back on the same day evening. Thus, the evidence of P.W.10 is in no way help the case of the prosecution. P.W.11 has spoken about the arrest of A.1, A.2 & A.5. The confession made by them and the recoveries of material objects.

14.P.W.12 is the vital witness for the prosecution. He has stated that on 21.01.2012, A.1 came to him and gave him some of the stolen articles for the purpose of pledging. Accordingly, in order to help A.1, P.W.12, pledged the said jewels at Muthoot Finance, Veeraganur Village and gave him Rs.14,200/-. P.W.12 has further stated that some more jewels were pledged by him at Manapuram Gold, Veeraganur Village. On the arrest of A.1 and on the disclosure statement made by him, P.W.12 has identified P.Ws.13 & 14, the branch Managers of Muthoot Finance and Manapuram Gold. According to them, the stolen articles were recovered by P.W.18 under Exs.P.20 and 21 mahazar. P.W.15 is the Doctor who examined A.1 has given an opinion that A.1 was capable of performing penal sexual intercourse with a woman. P.W.16 has spoken about the post mortem conducted on the body of the deceased and her final opinion regarding the cause of the death. P.Ws.17 & 18 have spoken about the investigation done in this case and the final report filed.

15.When the above incriminating materials were put to the accused, they denied the same as false. On the side of A.3, Mr.Ramados was examined as D.W.1; Mr.Manikandan @ Kalaimani (A.3) was examined as D.W.2 and four documents were exhibited as Exs.D.1 to D.4. Ex.D.1 is the report of a local vernacular news paper dated 22.01.2012; Ex.D.2 is a copy of the voters identity card of A.2; Ex.D.3 is a copy of driving licence of A.3 and D.4 is a copy of the Family Card of A.3. However, no witness was examined and no document was marked on the side of A.1, A.2, A.4 & A.5.

16.Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. Challenging the same, the appellants/accused 1 to 5 are before this Court with these Criminal Appeals.

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

18.This is a case based on circumstantial evidence. It is needless to point out that, in a case based on

circumstantial evidence, the prosecution has to prove the circumstances projected by it, beyond reasonable doubts and all such proved circumstances, should form a complete chain, without any break, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us go into the circumstances projected by the prosecution in the present case.

19.The first and foremost circumstance projected by the prosecution is that on 20.01.2012, at about 9.00 am, when P.W.1 left for his company concerned, where he was working, he left the deceased alone at his house. There is no other evidence to show that the deceased was found alive after 9.00 am on 20.01.2012. Thus, from the evidence of P.W.1, it is crystal clear that the deceased was lastly seen alive at 9.00 am on the day of occurrence.

20.The next circumstance projected by the prosecution is that according to P.W.1 at about 12.45 pm, the deceased spoke to him over cell phone and informed him that A.3 who was already known to their family had come to purchase certain cloth items in connection with a function at his house. He had selected certain cloth items to purchase. The deceased gave those details to P.W.1. P.W.1 in turn, calculated the price for the same and informed the deceased to collect Rs.8,525/- and then to sell the said cloth items to A.3. Within a short while thereafter, the deceased again called him and informed him that A.3 had taken only two shirts and had assured to come again to purchase the rest of the clothes. P.W.1 instructed her to collect the price and then to sell the clothes in the event A.3 came. This was the last call received from the deceased. Thus, from the phone call conversation between the deceased and P.W.1, the prosecution has established that the deceased was alive till 12.45 pm on 20.01.2012. We do not find any reason to reject this part of evidence.

21.The learned counsel for the appellant would submit that the call details regarding the above phone calls between the deceased and P.W.1 have not been collected by the prosecution from the cell phone service providers. Ofcourse, it is a flaw. Had the call details been collected by the Police that would have given added strength to the case of the prosecution. In our considered view, the failure to collect those call details from the cell phone service providers has not in any manner caused any dent in the case of the prosecution, as P.W.1 had no axe to grind against these accused. Thus, from the evidence of P.W.1, the prosecution has proved that the deceased was alive till 12.45 pm on 20.01.2012.

22.It is the further evidence of P.W.1 that at 4.00 pm, he tried to contact the deceased over phone. The cell phone of the deceased was in a switch off mode. This would only indicate that the deceased was either dead and was not in a position to attend the call. It is the further evidence of P.W.1 that as per the usual course, he returned to his house around 6.30 and 7.00 pm on the day of occurrence. He found the main door of the house locked from outside. He had one key of the compound gate. Hence, he opened the compound gate, went inside the compound, switched on the outer lights. Since, he had no key of the main door of the house, he went to the nearby tea shop. After returning from the tea shop, he found the deceased had not returned. He waited for some time. Thereafter, he called P.W.2 over phone. P.W.2 also came to the house of P.W.1. At 9.45 pm, they broke open the main door of the house and they found the deceased dead and lying in a pool of blood with injuries inside the house. They also came to know that some of the properties had been stolen away. Thus, from the evidence of P.Ws.1 & 2, the prosecution has clearly established that the deceased was found dead at 9.45 pm on 20.01.2012. Since, the main door of the house was found locked even at 7.00 pm itself and even after 7.00 pm nobody else had entered into the house as the main door of the house was found locked, it is presumable that the deceased would have died some time between 12.45 pm and 7.00 pm on 20.01.2012.

23.The deceased was found lying in a pool of blood and there were also injuries. The Doctor who conducted autopsy on the body of the deceased had opined that the deceased would have died due to strangulation as well as due to the other injuries found on the body of the deceased. Thus, the prosecution by means of the medical evidence has clearly established that the deceased died due to homicidal violence and the death would have occurred some time between 12.45 pm and 7.00 pm on 20.01.2012.

24.P.W.1 has stated that M.Os.1 to 14 were found missing from the house of P.W.1 which includes the key punch with keys relating to the main door of the house and the key punch with keys relating to the bureau of P.W.1 & the deceased and also certain title deeds relating to property. These facts have been mentioned at the earliest point of time even in Ex.P.1 itself by P.W.1. The assailants were not known. Therefore, it cannot be argued that the details of the stolen properties had been mentioned only for the purpose of the case. It is crystal clear that at the very first instance, P.W.1 had mentioned about the missing of M.Os.1 to 14 in Ex.P.1 itself which duly corroborates his oral evidence. Thus, the prosecution has established that M.Os.1 to 14 had been stolen away in the same occurrence in which, the deceased was done to death. Thus, it is presumable that the person or persons who

committed murder of the deceased had committed robbery of the jewels viz., M.Os.1 to 14 also.

25.Now, the next important question is as to who committed the above crime. In order to analyse the same, for the sake of convenience, let us take up the case against A.5.

26.So far as A.5 is concerned, in order to prove that he was one of the assailants/culprits who committed the crime, the prosecution relies only on the extra judicial confession said to have been given by A.3 to P.W.8 on 24.01.2012 at 5.30 pm. There is no other evidence against him. Now, the question is as to whether the said extra judicial confession of the co-accused namely A.3 could be the sole foundation to sustain the conviction of A.5. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in *Kashmira Singh v. State of Madhya Pradesh* (1952 AIR 159) wherein, it has been held that an extra judicial confession of the co-accused is not a substantive evidence against the other accused and the proper approach to the confession of the co-accused is to keep the same aside first and then, to marshal the other evidences available against the accused excluding the confession altogether from consideration and on such marshaling and on such appreciation, if the court is able to come to the conclusion that the accused has committed the said offence, the court can look into the confession given by the co-accused as a last resort to add strength to the said conclusion. In other words, the confession of the co-accused cannot be treated as a substantive evidence so as to convict the other accused. Here, in this case, as we have already pointed out, except the said extra judicial confession given by A.3 implicating A.5, there is no other evidence against him and therefore, A.5 is entitled for acquittal.

27.Now, turning to the case against A.4, according to the case of the prosecution, on 24.01.2012 at 5.30 pm, he appeared before P.W.8 along with A.3 and told him that he also wanted to surrender to the Police in connection with the above crime. P.W.8 admitted during cross examination that A.3 alone gave confession and he reduced the same into writing. It is his further evidence that A.4 did not give any confession. Thereafter, A.4 was produced before P.W.18 by P.W.8. P.W.18 arrested him and on such arrest, he gave a voluntary confession, in which, certain Material Objects were marked one of the material objects is the Tata Sumo bearing registration No.TN 20 4105 (M.O.20). So far as this vehicle is concerned, absolutely there is no evidence that the said vehicle was in any manner connected to the crime. The other material objects recovered from A.4 have also not been connected to the crime. M.Os.1 to 14 have been marked as stolen properties. Out of the properties recovered on the disclosure statement made by A.4, there was only one gold item which is a gold bangle with

the inscription of 916 hallmark weighing 3 soverigns. This inscription is mentioned in Ex.P.12 mahazar. P.W.1 has identified M.O.2 bangle as one of the stolen properties. But, absolutely, there is no evidence that M.O.2 gold bangle was the one which was recovered at the instance of A.4. Neither P.W.18 nor P.W.8 has identified M.O.2 as the gold bangle which was recovered from the possession of A.4. Thus, the prosecution has to depend only on the extra judicial confession given by A.3 to sustain the conviction of A.4. As we have already pointed out, the extra judicial confession of co-accused namely A.3 cannot be used as a substantive evidence against A.4 and therefore, A.4 is also entitled for acquittal.

28.Now, turning to the case against A.1 to A.3, P.W.3 Mr.Veeramani has stated that on 20.01.2012, he found all these accused viz., A.1 to A.3 moving towards the house of the deceased. When he enquired them, they told that they were going to the house of the deceased to purchase clothes. Though, P.W.3 has not stated in chief examination, about the time at which he saw these three accused, during cross examination A.3 has answered that it was around noon on 20.01.2012. From this evidence, the prosecution, to some extent, has proved that A.1 to A.3 were together moving towards the house of the deceased at or about the time of occurrence. We do not find any reason to reject the evidence of P.W.3 which is very convincing.

29.The learned counsel for the appellants would however, submit that there was no test identification parade conducted for these three accused. But, a perusal of the evidence of P.W.3 would go to show that he has stated that all these three accused were already known to him and therefore, the argument that there should have been prior test identification parade, deserves only to be rejected.

30.Then, comes the vital evidence of chance finger prints found at the place of occurrence. P.W.9, the finger print expert has stated that on the request made by P.W.18, he visited the place of occurrence and searched for chance finger print and at last, he found two chance finger prints, on the left side door of the bureau in the bed room of the deceased where the deceased was lying dead. Since, the properties were stolen away from the bureau the culprits had occasion to handle the door of the bureau.

31.P.W.9 has further stated that he lifted those two chance finger prints and marked the same as Exs.M.1 & M.2. He has further stated that when he compared the same with the finger prints of the inmates of the house namely P.W.1 and the deceased and also that of P.W.2, they did not tally with the same. He preserved the same. He has further stated that he compared the said chance finger prints with the admitted finger prints of the accused involved in various cases which were preserved by the Finger Print Bureau. He found on

comparison that the finger print of the first accused herein preserved in connection with the case in Crime No.19/2011 under Sections 302 & 379 I.P.C., on the file of the Edaikal Police Station, tallied with the chance finger print marked as Ex.M.2. Thus, from this evidence, the prosecution has clearly proved that A.1 had gone into the house of the deceased and that is how his finger print had come into being on the left side door of the bureau of the house. Similarly, after the arrest of A.2, the sample finger print taken from him was compared and the same was tallied with the sample finger print marked as Ex.M.1.

32.The learned counsel for the appellants would submit that the photograph of the chance finger prints taken have not been marked in evidence. In our considered view, it will be of no consequence because, there was no dispute raised during trial that the non production of the photographs has in any manner caused prejudice to A.1 and A.2. Therefore, we hold that the said chance finger prints belonging to A.1 and A.2 found at the bureau at the house of the deceased is a very strong circumstance to prove that A.1 & A.2 had gone to the house of the deceased at or about the time of occurrence and handled the bureau.

33.The next circumstance is the arrest of A.1, A.2 & A.5 on 26.01.2012 at 2.00 am. During routine vehicle check up by P.W.18, he intercepted the vehicle bearing registration No.TN 49 H 1666 and on such interception, A.1 gave a voluntary confession out of which, some of the stolen properties were recovered and from out of the disclosure statement made by A.2, some more stolen properties were recovered. The details of the stolen properties so recovered on their disclosure statements have already been dealt with herein above elaborately.

34.The learned counsel for the appellants would submit that P.W.1 has admitted during cross examination that A.1 was brought to the place of occurrence by about 1.00 am on the next day of the occurrence itself. From out of this, the learned counsel would submit that the story propounded by the prosecution that A.1, A.2 & A.5 were arrested only on 21.06.2012 at 2.00 am cannot be true. We have gone through the entire cross examination of P.W.1. Ofcourse, he has stated that on the next day of the occurrence, at 1.00 am, A.1 was brought to the place of occurrence by the Police. But, we are not prepared to give much weightage for this part of evidence of P.W.1 because, due to fading memory, P.W.1 would have stated so. Therefore, much weightage cannot be given for that part of evidence.

35.P.W.11 is an independent witness. A.1 & A.2 have got no explanation regarding the possession of stolen articles including the key punch of the main door as well as the key punch of the bureau which have been mentioned in the F.I.R.,

itself. In the absence of any such explanation by A.1 and A.2 for the possession of the above stated stolen articles, we have no option but, to presume as provided in Section 114 Indian Evidence Act that these two accused had also committed the crime in question.

36.The evidences of P.Ws.12, 13 & 14 also lend assurance to the fact that on 21.01.2012, A.1 was found in possession of some of the stolen properties which were given to P.W.12 by him and P.W.12 in turn, produced the same to P.Ws.13 & 14 for the purpose of pledging. The evidences of P.Ws.12 to 14 also further lend assurance to the above conclusion which we have arrived at.

37.In order to add strength to the said conclusion, we have to look into the extra judicial confession given by A.3 to P.W.8 wherein, he has stated about the involvement of A.1 and A.2. We find that the extra judicial confession given by A.1 to P.W.8 lends adequate assurance to the conciliation that A.1 & A.2 have committed the crime along with A.3. So far as A.3 is concerned, undoubtedly, his confession to P.W.8 is a substantive evidence against him. We do not find any reason to doubt the veracity of the evidence of P.W.8. We hold that the said extra judicial confession is voluntary and the same by itself is sufficient to prove the guilt of A.3. It also draws corroboration from other evidences more particularly that of P.W.3. From these circumstances, the prosecution in our considered view, has clearly established that A.1 to A.3 had gone to the house of the deceased under the guise of purchasing clothes and committed murder of the deceased and also stolen away the valuable articles as detailed herein above. Thus, so far as A.1 to A.3 are concerned, we hold that the prosecution has clearly proved their guilt and therefore, the appeals filed by A.1 to A.3 are liable to be dismissed.

38.Now, turning to the quantum of punishment imposed on A.1 to A.3, the trial Court has imposed only a minimum punishment which does not require any interference at the hands of this Court. Thus, we do not find any merit in the appeals filed by A.1 to A.3 viz., Crl.A.Nos.582, 619 & 385 of 2013.

39.In the result, Crl.A.Nos.582, 619 & 385 of 2013 are dismissed and the conviction and sentence imposed by the trial Court on A.1 to A.3 are confirmed and Crl.A.Nos.371 & 350 of 2013 filed by A.4 & A.5 respectively are allowed and A.4 & A.5 are acquitted from all charges. The fine amount, if any paid by A.4 & A.5, shall be refunded to them. The bail bond, if any executed by A.4 & A.5, shall stand discharged. The trial

Court is directed to take steps to secure the presence of A.1 to A.3 in this case to commit them to prison to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Judicial Magistrate No.I, Virudhachalam.
2. The Cheif Judicial Magistrate Cuddalore (for Information)
Cuddalroe (for Information)
3. The Sessions Judge, District Mahila Court Cuddalore.
4. The Judicial Magistrate No.I, Cuddalore.
5. The Maghistrate, Cuddalore.
6. The District Collector, Trichy.
7. The Director General of Police, Mylapore, Chennai.
8. The Distirct Collector, Cuddalore.
9. The Superintendent Central Prison, Trichy.
- 10.The Public Prosecutor, High Court, Madras.

+1cc to Mr.T.P. Senthilkumar, Advocate, S.R.No.26215
+1cc to Mr.S. Saravanakumar, Advocate, S.R.No.25767
+1cc to C. Prasanna Venkatesh, S.R.No. 25519

JSV(CO)
EU(23/04/2016)

CrI.A.Nos.582, 619, 385, 371 &
350 of 2013