

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Referred Trial No.3 of 2016
and
Criminal Appeal No.752 of 2016

Referred Trial No.3 of 2016:-

State rep. By
Inspector of Police,
Karamadai Police Station,
Coimbatore,
Cr.No.362 of 2015

.... Prosecution

Vs

Mahesh

.... Accused

Prayer:- Referred trial for confirmation of death sentence passed by the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore by judgment dated 27.09.2016 in S.C.No.67/2015 on the file of.

For State : Mr.R.Rajarathinam,
Public Prosecutor
Assisted by Mr.P.Govindarajan,
Additional Public Prosecutor

For Respondent : Mr.C.M.Gunasekaran, for
Mr.V.Purushothaman

Criminal Appeal No.752 of 2016:-

Mahesh

... Appellant/Accused

Vs

State rep. By
Inspector of Police,
Karamadai Police Station,
Coimbatore,
Cr.No.362 of 2015

... Respondent/Respondent

Prayer in Crl.A.No.752/2016:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment in S.C.No.67 of 2015 dated 27.09.2016 on the file of the learned Sessions Judge, Mahalir Neethimandram (Mahila Court), Coimbatore.

For Appellant : Mr.C.M.Gunasekaran, for
Mr.V.Purushothaman

For Respondent : Mr.R.Rajarathinam,
Public Prosecutor
Assisted by Mr.P.Govindarajan,
Additional Public Prosecutor

COMMON JUDGEMENT

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

The learned Sessions Judge, Mahalir Court, Coimbatore has submitted the proceedings of the Sessions Case No.67 of 2015 for confirmation of sentence of death imposed on Mr.Mahesh, who is the sole accused in the said case. Mr.Mahesh (hereinafter referred to as "the accused") stood charged for offences under Sections 449, 324, 376, 302, 397 and 307 I.P.C. By judgment dated 27.09.2016, the trial Court convicted him under all the charges and sentenced him as detailed below:-

Sl.No	Section of law	Sentence
1	449 I.P.C.,	Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months
2	376(1) I.P.C.,	Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months

Sl.No	Section of law	Sentence
3	302 I.P.C.,	To death and he shall be hanged by neck till he is dead and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months
4	392 r/w 397 I.P.C.,	Rigorous Imprisonment for ten years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months
5	307 I.P.C.,	Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months

The said reference made by the trial Court for confirmation of death sentence is dealt with as Referred Trial No.3 of 2016. Challenging the conviction and sentence imposed on the accused by the trial Court, he has come up with Criminal Appeal No.752 of 2016. That is how these matters are before us for disposal.

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

The deceased in this case was one Ms.Ramya, hardly aged 24 years. She was the first daughter of P.Ws.1 & 2. The deceased was a post graduate having M.E., degree to her credit. She was working as a Lecturer in a Private Engineering College known as "Akshaya Engineering College", Eichanari Village. She was staying in a working women hostel at Eichanari Village and going to the college every day. P.Ws.1 & 2 have got another daughter. P.Ws.1 & 2 along with their second daughter were residing in the Tamil Nadu Electricity Board quartres at Kothagiri. P.W.1 had a house of his own at Karamadai Village. P.W.1's mother-in-law was residing in the said house. P.Ws.1 & 2 used to visit the house at Karamadai frequently. The deceased used to visit the house of P.W.1 at Karamadai during holidays.

(a) On 01.11.2014 the deceased had informed P.W.1 over phone that she would come to the house of P.W.1 at Karamadai. On 03.11.2014, P.W.1's mother-in-law who was residing at the house at Karamadai had gone to Pollachi to participate in a function. Therefore, P.W.1 had sent his wife namely P.W.2 to their house at Karamadai to stay since, the deceased was to come to the said house on 03.11.2014. P.W.2 had already arrived in their house at Karamadai. On 03.11.2014, P.W.1 was on duty, at his office. Around 9.00 pm, he contacted the deceased over mobile phone. At

that time, the deceased informed him that she had already started by Bus to go to Karamadai. She also assured that on reaching the house at Karamadai, she would speak to him. But, there was no phone call from the deceased after 9.00 pm. Further, the repeated efforts made by P.W.1 to speak to the deceased could not fructify, as the deceased did not pick up the phone. P.W.2 had left her cell phone at her house at Kothagiri itself and so P.W.1 could not contact P.W.2.

(b) On 04.11.2014, P.W.1 returned to his house at Kothagiri and informed his second daughter that there was no phone call from the deceased and the deceased also did not pick up the phone call from him. He was under the impression that the deceased must have been tired and so, sleeping. From Kothagiri he reached Karamadai around 1.30 pm on 04.11.2014.

(c) When he reached his house at Karamadai, he found the outer compound gate of the house locked from inside. He called his wife (P.W.2) by name. But, there was no response from inside. He tried to contact the deceased over phone. There was no response. Therefore, he scaled down the compound wall, entered into the house. The main door of the house had been just closed without being locked. He pushed and opened it. When he entered into the house, he found the horrible scene there.

(d) P.W.2 namely, the wife of P.W.1 was lying in the front hall of the house with extensive injuries. She was only semi conscious. When he entered into the room, he found the deceased lying in her bed room, on the bed, nude. There were extensive injuries on her body. There was a pool of blood just by the side of the cot. There were symptoms of rape. Due to shock, he was unable to come to terms immediately. He cried for help. The neighbours rushed to the house. With their help thereafter, he went to the Police Station and made a complaint at 3.00 pm on 04.11.2014.

(e) P.W.18, the then Sub Inspector of Police on receipt of the said complaint at 3.00 pm on 04.11.2014 registered a case in Crime No.362/2014 for offence under Sections 302 & 307 I.P.C. Since, the assailant was not known, F.I.R., was registered against unknown culprits. Ex.P.1 is the complaint and Ex.P.18 is the F.I.R. P.W.2, in the meanwhile was taken to the hospital and admitted at Venugopal Hospital, which is a private hospital at Thudiyalur Village.

(f) The case was taken up for investigation by P.W.23, the then Inspector of Police. Immediately, he went to the place of occurrence along with a Forensic Expert and a Finger Print Expert. A sniffer dog was also brought to the place of occurrence. The sniffer dog could not get any clue. The Finger

Print Expert also could not trace out any chance finger print from the house. The Forensic Expert collected blood swaps from the pool of blood lying inside the house. P.W.23 prepared an observation mahazar and a rough sketch, in the presence of witnesses. At his request, P.W.15, a Senior Photographer took photographs of the deceased only and the place of occurrence from 25 angles. P.W.23, collected swabs of blood from 19 places inside the house. He recovered the blood stained kerchief and another blue colour blood stained kerchief from the place of occurrence. He recovered few more blood stained clothes found at the place of occurrence, including the inner garments of the deceased. Then, he conducted inquest on the body of the deceased, in the presence of witnesses and forwarded the body for post mortem.

(g) P.W.19, Dr. Jayasingh, conducted autopsy on the body of the deceased on 05.11.2014 at 11.10 am. He found the following injuries:-

1. Laceration 5x1cmxscalp deep noted over mid frontal region, 5x1cmxmuscule deep noted over upper of right frontal region, 2x1cmxscalp deep noted over left lower parietal region, 4x1cmxscalp deep noted over left parietal eminence, 8x1cmxscalp deep noted over left parieto and right parietal region. 10x1cmxscalp deep noted over right temporo postero parietal region. 4x1cmxscalp deep noted over right occipital region, 2x1cmxbony deep noted over lateral aspect of right eyebrow, underlying bone found fracture with surrounding tissue contusion.

2. Contusion 3x2cm noted over back of left mid arm with surrounding abrasion cm over the area 3x2cm

3. Pressure abrasion mark 5 in number noted over dorsum of left hand, on dissection underlying dorsum of hand muscle and lower end of forearm muscle found contused over an area of 12x3cm

4. Laceration 1x0.5cm noted over mucosa of the posterior fourchette with surrounding tissue contused. A contusion 1x0.5x0.5cm noted just above the clitoris. A contusion noted around the urethral orifices. Hymen found absent.

On dissection of scalp, skull and dura: Sub scalpal contusion noted over entire frontal, left temporal and left occipital region. Another contusion noted over right temporal and right occipital region.

Depressed fracture 3x1x0.5 cm noted over left temporal bone. Sutural separation noted over entire coronal suture. Another depressed fracture 1x1x0.5cm noted over left coronal suture line diffuse sub dural and sub arachnoid hemorrhage noted over entire brain, brain found softening. Sub dural clots 10 grams noted over both parietal lobes. Skull based fracture noted over middle cranial fossa."

(h)P.W.23 collected the vaginal smear from the dead body and forwarded the same for DNA examination. Unfortunately, the DNA could not be extracted from the said sample sent by P.W.19 because, the samples got damaged in the mean while. Finally, P.W.19 gave opinion that the deceased had been subjected to sexual intercourse just before her death and he further opined that the death was due to head injuries and the said injuries could have been caused by a weapon like M.O.7 (wooden log). Ex.P.59 is the post mortem certificate. Ex.P.62 is the final opinion of P.W.19 regarding the cause of death of the deceased.

(i)P.W.23, examined P.W.2 who was undergoing treatment in the hospital and recorded her statement. At his request, the material objects were sent for chemical examination. During the course of investigation, it came to light that the jewels owned by the deceased and the laptop owned by her were all found missing. After getting information from the Doctor who conducted autopsy and after making substantive progress in the investigation, he altered the case into one under Sections 302 & 397 I.P.C. Ex.P.76 is the alteration report.

(j)On 23.01.2015, when P.W.23 was engaged in routine vehicle check up at Mettupalayam Annuir four road junction, around 5.15 am, the accused was found moving in a suspicious circumstances. He was not previously known to P.W.23. The Village Administrative Officer (P.W.6) and his moneys were also present at that time. In view of suspicion, P.W.23 interrogated the accused. He confessed his guilt to P.W.23. Therefore, P.W.23 arrested the accused. While in custody, the accused in the presence of the above witnesses, made a voluntary confession. He was found in possession of 3 sovereigns of gold chain. He produced the same to P.W.23. P.W.23 recovered the same in the presence of the same witnesses. In the said confession, the accused disclosed the place where he had hidden the wooden log. In pursuance of the same, he took P.W.23 and witnesses to the place, behind the house of the deceased and identified the wooden log which was hidden by him. P.W.23 recovered the same (vide M.O.7). Then in pursuance of the disclosure statement, the accused took P.W.23 and witnesses to his house. From his house,

he produced a laptop (M.O.4) a gold chain (M.O.5) ear studs (M.O.6). P.W.23 recovered the same under a mahazar in the presence of same witnesses. Then, in pursuance of the disclosure statement, he took the police and witnesses to Muthoot Fin Corp Company, Tirunelveli. He identified the said establishment and said that he had pledged two gold rings in the name of P.W.12. P.Ws.7 & 8 are either the officials or the workers of the said concern. M.O.1 series were recovered from them. In pursuance of his disclosure statement then, he took the Police and witnesses to Tenkasi at 4.45 pm and identified Muthoot Finance Bajaj branch, where he identified P.Ws.9 & 10. The accused told that he had pledged a pair of ear studs in the said concern. In pursuance of the same, M.O.3 ear stud and receipts were recovered from P.Ws.9 & 10.

(k) On returning to the Police Station, P.W.23 forwarded the accused to Court for judicial remand after taking precautionary measures thereby concealing his identity to the witnesses and to the media because, the accused had to be put up for test identification parade.

(l) P.W.23 forwarded the material objects to Court. These material objects were later on identified as that of the properties belonging to the deceased. The accused was sent for medical examination. The medical examination revealed that the accused was sexually potential to have sexual intercourse with a female. At the request of P.W.23, P.W.20, the learned Judicial Magistrate conducted identification parade on 04.02.2015 at the central prison coimbatore. P.Ws.2 & 4 identified the accused correctly on all the three occasions during the identification parade. On completing investigation, P.W.23 laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 23 witnesses have been examined and 85 documents have been marked besides 28 material objects.

4. Out of the said witnesses, P.W.1, the father of the deceased has stated about the fact that at the house at Karamadai, where the occurrence had taken place, on the day of occurrence (on 03.11.2014), P.W.2 and the deceased alone were there. He has further stated that at 1.30 pm on 04.11.2014, when he came to his house, at Karamadai, the outer gate of the house was locked from inside then he called his wife (P.W.2) by name. There was no response from inside the house. When he tried to contact his daughter, the deceased, there was no response and thereafter, he managed to go into the house and found the

horrible scene. He has narrated the entire events that followed. He further stated that M.Os.1 to 6 were found missing. Later on he identified the same as that of the deceased.

(a) P.W.2 is the injured witness. She is the mother of the deceased and wife of P.W.1. She has stated that the deceased had just arrived in Karamadai from Eichanari. She has further stated that on her arrival, both of them had coffee followed by dinner. The deceased went to the bed room to sleep. When P.W.2 was in the main hall taking food, one male person entered into the house with wooden log in his hands. She later on identified the said person as the accused. When she enquired as to who he was, the accused suddenly started attacking her. She sustained injuries and fell down. At that time, her daughter viz., the deceased on hearing the alarm raised by P.W.2, rushed to the main hall but, the accused pushed her into the bed room. Thereafter, P.W.2 fainted and therefore, she did not know anything about the subsequent happenings. On the next day, by about 1.30 pm, her husband (P.W.1) came and at that time, she was semi conscious. Then she was taken to hospital and admitted. She has also identified the stolen properties as that of the deceased.

(b) P.W.3 has spoken about the preparation of observation mahazar and rough sketch and the recovery of material objects including the blood stained swabs in the place of occurrence. P.W.4 is yet another important witness. He is a neighbour of P.W.1. According to him, on 03.11.2014, around 9.40 pm, as usual, he came out of his house and flashed the torch light to verify whether the gate has been locked, etc. It was his usual practice. At that time, he found the accused moving just by the side of the compound wall. When he enquired him, he told that he had come there to sit and take liquor. P.W.4 cautioned him that it was not a place for drinking and wanted him to leave the place. Then the accused left the place of occurrence. On the next day, he came to know that the deceased was done to death and P.W.2 was attacked by the assailant. He identified the accused during test identification parade.

(c) P.W.5 is yet another neighbour of the deceased. She has stated that around 10.30 pm, on 03.11.2014, when she was in the bed room in her house, she heard the alarm raised by someone. Then after leaving the child, she went to the upstairs of the house and verified whether anyone was moving. But, she did not find anybody. Then she came down to the house and slept believing that nothing would have happened.

(d) P.W.6 - the then Village Administrative Officer has spoken about the arrest of the accused; disclosure statement made by him and the consequential recovery of material objects

namely, jewels and laptop belonging to the deceased. P.Ws.7 & 8 have stated that they are the officials of Muthoot Finance, Tirunelveli from where, the accused had pledged two gold rings (M.O.1) in the name of P.W.12. They have further stated that they were later on enquired by the police.

(e) P.Ws.9 & 10 have stated that they are the officials of Muthoot Finance Bajaj, Tenkasi from where, the accused had pledged a pair of ear stud (M.O.3). The said material object was recovered by P.W.23, on the disclosure statement made by the accused. They have further stated that they were later on enquired by the Police.

(f) P.W.11 - Dr.Kala has stated that she examined P.W.2 on 04.11.2014 at 3.00 pm at Venugopa Hospital at Thudiyalur. When she was brought to the hospital, she was conscious. She told that she was attacked by an unknown person. She found the following injuries on P.W.2:-

"1.Multiple lacerations of scalp
a.Forehad
b.Occipital region
c.bilateral parietal region
2.Stepping with crepitus of left infra orbital region and zygoma
3.Right eye - ecchymosis+ lid edema+ left eye lower eye lid tear, ecchymosis + SCH+"

(g) Ex.P.85 is the Wound Certificate pertaining to P.W.2. P.W.12 is an important witness for the prosecution. He has stated that he had a friend by name Mr.Mani. The accused is a friend of Mr.Mani. On 15.11.2014, Mr.Mani and the accused came to him and sought for his help to pledge two gold rings. The accused was in possession of two gold rings and he wanted to pledge the same in Muthoot Finance in the name of P.W.12. Accordingly, he pledged M.O.1 in his name. Thereafter, after the arrest of the accused, in pursuance of the disclosure statement made by him, on 23.11.2014, the Police came and recovered the said material object from the Muthoot Finance and enquired P.W.12.

(h) P.W.13 has stated that when she was at the Government Medical College and hospital at Coimbatore, P.W.2 was brought there for further treatment on 06.11.2014 at 4.30 pm. She has spoken about the treatment given to P.W.2. Ex.P.19 is the Accident Register. P.W.15 has spoken about the photographs taken by him from the place of occurrence as requested by P.W.23. P.W.16 is an expert from the Forensic Sciences Laboratory. He has stated he examined the material objects sent to him for

chemical examination. On such examination, he found that the human blood was found on all the material objects. But there were no seminal stains or blood stains on the panties of the deceased. P.W.17 is an Assistant Engineer in the Tamil Nadu Electricity Board, Karamadi. He has stated that there was no electricity in the place of occurrence between 10.45 pm and 10.50 pm on 03.11.2014.

(i) P.W.18, has spoken about the registration of the case on the complaint of P.W.1. P.W.19 has spoken about the post mortem conducted by him and the final opinion regarding the cause of death. P.W.20 is the learned Judicial Magistrate who has spoken about the identification parade conducted by him in which, P.Ws.2 & 4 have participated and they have correctly identified the accused. P.W.21 is yet another Forensic Expert. She has stated that she examined the material objects to find out the group of the blood. She found that in some of the blood stains, it was found that the blood is of "B" group and in some of the blood stains it was found that the blood was of "A" group. P.W.22 is an Expert in the Forensic Science Lab, Chennai and he has stated that the vaginal smear taken from the dead body sent to her for examination was found to be not fit for extracting DNA for the purpose of examination and therefore, no DNA examination could be conducted to find out whether spermatozoa was found on the vaginal smear of the deceased. P.W.23 has spoken about the investigation done by him and the final report filed.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor did he mark any document on his side. In short, his defence was a total denial.

6. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. The learned Sessions Judge, Mahalir Court, Coimbatore has submitted the proceedings of the Case for confirmation of sentence of death imposed on the accused. As stated already, the appellant has also preferred the Criminal Appeal. That is how, the Referred Trial Case and the Criminal Appeal were taken up together for disposal by this Court.

7. We have heard the learned counsel appearing for the accused and the learned Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The learned Public Prosecutor appearing for the State would submit that from the circumstantial evidence, the

prosecution has succeeded in establishing the guilt of the accused. He would further submit that the trial Court was right in finding that it is a 'rarest of rare case' and the accused deserves death penalty. Thus, according to the learned Public Prosecutor, the conviction as well as the sentence imposed by the trial Court on the accused needs to be confirmed.

9.The learned counsel for the accused would assail the findings of the trial Court. According to him, the occurrence had taken place when P.W.2 was sleeping. Therefore, the identity of the accused made by P.W.2 in Court cannot be believed. The learned counsel would next contend that so far as the recovery of material objects from Muthoot Finance at Tirunelveli as well as Muthoot Finance Bajaj at Tenkasi, the case of the prosecution cannot be believed. He would submit that though, P.Ws.1 & 2 have stated that after the post mortem was over and the body was cremated, they came to know about the theft of the jewels owned and the personal belongings of the deceased and the laptop on 14.11.2014 itself. But they did not inform the same to the Police immediately. The learned counsel would further point out that for the first time, they had disclosed about the same to P.W.23 only on 20.11.2014. Thus, according to the learned counsel, there was no theft of jewels and there was no theft of laptop of the deceased. A false theory has been now projected by the Police to strengthen the case.

10.The learned counsel for the accused would further submit that there is no evidence that the deceased was raped. He would further contend that the wooden log (M.O.7) was never shown to P.W.2 during investigation and therefore, the identity of the wooden log made by P.W.2 for the first time before the Court, cannot be given any weightage. The learned counsel would further submit that the prosecution has not proved the case beyond reasonable doubts. He would add that assuming that the prosecution has succeeded in establishing the guilt of the accused, this is not a rarest of rare case as held by the trial Court, warranting death penalty.

11.We have considered the above submissions.

12.From the evidences of P.Ws.1 & 2, the prosecution has established beyond any doubt that on the fateful day (03.11.2014), at the house of P.W.1, P.W.2 and the deceased alone were there. P.W.2 has further stated that the deceased had just come to the house and after having coffee followed by dinner, she went to sleep. P.W.2 was still taking food. It was only at that time, the accused entered into the house of P.W.1 and attacked P.W.2. When P.W.2 raised alarm, and on hearing the same, when the deceased rushed to the rescue of P.W.2, the accused pushed the deceased into the bed room and thereafter,

P.W.2 did not know as to what had happened to the deceased because, she fell unconscious. P.W.2 had identified the accused during identification parade. We have gone through the evidence of P.W.2 as well as the evidence of the learned Judicial Magistrate who conducted identification parade. Though, these witnesses have been cross examined at length, nothing has been elicited to create even a slightest doubt on the facts spoken by them.

13. Apart from that, the evidence of P.W.4 also assumes importance. P.W.4 - a neighbour has stated that around 9.45 pm, he found the accused moving near the house of the deceased. When he enquired him, he told that he had come to sit there to have liquor. When P.W.4 warned him that this was not a place to have liquor, he left the said place. P.W.4 had identified the accused during identification parade. P.W.4 has also been subjected to lengthy cross examination but, nothing could be elicited so as to doubt the credibility of the evidence given by P.W.4. Thus, the evidence of P.W.4 also corroborates the eye witness account of P.W.2. Thus, from the evidence of P.W.2, the prosecution has succeeded in establishing that it was this accused who trespassed into the house of P.W.1; attacked P.W.2; attacked the deceased; raped her; killed her and committed robbery.

14. The Doctor who conducted autopsy (P.W.19), had found extensive injuries on the body of the deceased including injuries to her vaginal passage. Though, DNA examination could not be conducted because, the vaginal smear of the deceased collected and forwarded for conducting DNA examination could not be used as the same had got damaged. On that score, we cannot reject the evidence of P.W.19 who has given reasons as to why he concluded that the deceased had been subjected to sexual intercourse just before her death. He has pointed out number of injuries on her private part both inside as well as outside. The hymen was ruptured. The dead body was found nude. All the clothes including the inner garments had been removed. From these symptoms only, P.W.19 has opined that the deceased had been subjected to sexual intercourse just before her death. Similarly, his opinion for the cause of death was that she died due to shock and hemorrhage due to the head injuries found on the body. From the evidence of P.W.19, it is crystal clear that the deceased had been raped and killed. The act of rape as well as commission of murder had taken place in the same transaction, in which, P.W.2 was also attacked by the accused.

15. Apart from the above, there is yet another important circumstance, viz., on the arrest of the accused on 23.01.2015, in the presence of P.W.6 while in custody, the accused had made a voluntary confession. He was at that time, found in possession of a gold chain weighing 3 sovereigns. That was later on

identified by P.Ws.1 & 2 as that of the deceased (vide M.O.2). He disclosed that he had pledged M.O.1 (2 gold rings) at Muthoot Finance, Tirunelveli, in the name of P.W.12. P.W.12 has stated that the accused came to him along with his friend Mr. Mani and requested him to pledge M.O.1 (two gold rings) in his name in the Tirunelveli Muthoot Finance. Accordingly, M.O.1 was pledged in his name. The accused was thus in possession of M.O.1 on 15.11.2014 i.e., after the occurrence. M.O.1 series have been identified as that of the deceased by P.Ws.1 & 2. M.O.1 series were recovered from Tirunelveli Muthoot Finance i.e., from P.Ws.7 & 8. There is no reason to reject their evidences also. Similarly, in pursuance of the disclosure statement made by the accused, M.O.4 - laptop was recovered from his house, as identified by him. Later on, M.O.4 was identified as that of the deceased by P.Ws.1 & 2. M.Os.5 & 6 were also recovered from the house of the accused in pursuance of the disclosure statement made by him. The said material objects have also been identified as that of the deceased by P.Ws.1 & 2. Thus, M.Os.1 to 6 were found in possession of the accused which were recovered in pursuance of the disclosure statement made by him from Tirunelveli Muthoot Finance and the Tenkasi Muthoot Finance Bajaj and from the house of the accused. The accused has got no explanation to offer in respect of the alleged possession of these stolen properties. Therefore, we have to draw a presumption under Section 114 of the Indian Evidence Act, that it was this accused who committed murder of the deceased and had stolen away M.Os.1 to 6. Since, we have already concluded that the murder and robbery had taken place in one and the same occurrence and since, the presumption drawn under Section 114 of the Indian Evidence Act remains unrebutted by the accused, it goes to conclusively prove that it was this accused who committed murder of the deceased after raping her.

16. The learned counsel for the appellant would submit that P.W.2 had made a statement to P.W.13 that when she was sleeping, she was attacked by an unknown person and she did not know as to how her daughter was attacked. Referring to the said statement recorded by P.W.13, the learned counsel tried to assail the evidence of P.W.2 stating that P.W.2 would not have seen the occurrence at all. This argument deserves no weightage because the said statement made by P.W.2 prior to her deposition before the Court, being a 'former statement' could be used only to contradict the maker viz., P.W.2 as provided under Section 145 of the Indian Evidence Act. The said statement namely a 'former statement' can never be treated as substantive evidence, so as to be read in evidence. The purpose of contradicting a witness with his former statement is not only to prove the contradictory statement but also to afford an opportunity to the maker of the statement to explain as to why such contradictory statement was made by him/her. If the explanation offered by the maker of the

statement for the said contradiction statement is accepted by the Court then, the said contradiction is of no consequence. In the event the said contradiction has not been explained by the maker of the contradictory statement and the said contradiction is also very vital in deciding the case as provided in Section 155 of the Indian Evidence Act, it may impeach the credit of the said witness. Here, in this case, the so called statement made by P.W.2 to P.W.13 was not at all used to contradict the evidence of P.W.2. Therefore, the attempt of the defence to treat the same as substantive evidence and to read the same in evidence, cannot be countenanced. Therefore, we reject the said argument of the learned counsel.

17.From the foregoing discussions, we hold that the prosecution has established the case beyond any reasonable doubt that it was this accused who trespassed into the house of P.W.1; attacked P.W.2 with wooden log; attacked the deceased with wooden log; raped and killed the deceased and robbed the material objects (M.Os.1 to 6). Thus, the trial Court was right in convicting the accused under all the charges.

18.Now, turning to the quantum of punishment, the trial Court has imposed death sentence for the offence under Section 302 I.P.C., on the accused. Though, it is submitted by the learned Public Prosecutor that the proved facts of the present case would fall within the 'rarest of rare doctrine', as propounded by the Constitution Bench of the Hon'ble Supreme Court in Bachan Singh v. State of Punjab (AIR 1980 SC 898), we are not persuaded by the said argument.

19.Having regard to these mitigating as well as aggravating circumstances, discussed herein above, we find that this is not a 'rarest of rare case' so as to convict the accused under the purview of 'rarest of rare doctrine' as it is argued by the learned Public Prosecutor. In this regard, we may rely on a judgment of the Hon'ble Supreme Court in Swamy Shraddananda (2) v. State of Karnataka (2008 (13) SCC 767) wherein, in similar circumstances, the Hon'ble Supreme Court has held that it is not a rarest of rare case. We are therefore, unable to confirm the death sentence imposed on the appellant instead we are inclined to modify the sentence of death into one of imprisonment for life but at the same time, we are of the view that the accused shall not be considered for any remission of sentence (premature release) for a period of 25 years. Hence, the accused is liable to be punished for imprisonment for life besides fine amount, for the offence u/s.302 IPC. So far as the sentence imposed on the accused by the Trial Court, in respect of the other offences are concerned, they are proportionate to the gravity of the offences and therefore, they are liable to be confirmed.

20.In the result, the Referred Trial Case No.3 of 2016 is disposed of and Crl.A.No.754 of 2016 is allowed in part in the following terms:-

(i)The conviction and sentence imposed on the appellant for the offences under Sections 449, 376(i), 392 r/w 397 and 307 I.P.C., are hereby confirmed;

(ii)The conviction of the appellant for offence under Section 302 I.P.C., is confirmed however, the sentence imposed by the trial Court is modified and he is sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months;

(iii)It is directed that the said sentences shall run concurrently. It is further directed that the accused shall not be considered for remission of this sentence for 25 years from the date of judgment of the Trial Court.

(iv)We further direct the Superintendent of Police, Coimbatore to grant Rs.3 lakhs as compensation, as per the scheme floated by the Government of Tamil Nadu under Section 357-A Victim compensation scheme, to P.Ws.1 to 2 in equal moieties. The said amount shall be deposited by the Superintendent of Police to the credit of the Secretary Legal Services Authority, Coimbatore and the Secretary shall in turn pay the same to P.Ws.1 & 2 in equal moieties.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.The Sessions Judge,
Magalir Neethimandram, (Mahila Court),
Coimbatore.

2.The Judicial Magistrate,
Mettupalayam.

3.-Do- Thro The Chief Judicial Magistrate,
Coimbatore.

4.The Inspector of Police,
Karamadai Police Station,
Coimbatore. Cr.No.362 of 2015

5.The District Collector,
Coimbatore.

6.The Superintendent,
Central Prison,
Coimbatore.

7.The Secretary,
Legal Services Authority,
Coimbatore.

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

9.The Superintendent of Police,
Coimbatore.

10.The Public Prosecutor,
High Court, Madras.

+1cc to M/S.V.Purushothaman, Advocate sr.75984

Referred Trial No.3 of 2016
and
Criminal Appeal No.752 of 2016

ug[col]
srg 22/12/2016

सत्यमेव जयते

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