

**Bail slip**

The Appellant /Accused A1 in criminal Appeal 170 of 2015
Vairamuthu s/o. Subbaiah Nadar Accused No.2 Muthu Kumar s/o.
Subramanian male were released on bail by order of this court
dated 05.01.2016 made in Mp(md)No.1 of 2016 in criminal Appeal(md)
No 170 of 2015 and order dated 26.10.2015 made in mp(md) 1of 2015
criminal Appeal 169 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE **A.SELVAM**
and
THE HONOURABLE MR.JUSTICE **P.KALAIYARASAN**

Criminal Appeal (MD) Nos.169 and 170 of 2015

Muthukumar	.. Appellant/A2 in Crl.A.No.169/2015
Vairamuthu	.. Appellant/A1 in Crl.A.No.170/2015

versus

The State represented by The Inspector of Police, Panavadalichathiram Police Station, Crime No.123/2009 Tirunelveli District.	.. Respondent/complainant
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PRAYER: Criminal Appeals are filed under Section 374(2) of Cr.P.C. to call for the records from Mahalir Neethimandram, Tirunelveli, Tirunelveli District and to duly set aside the judgment in S.C.No.42 of 2011 dated 08.07.2015 passed by Mahalir Neethimandram, Tirunelveli, Tirunelveli District.

For Appellants https://hcservices.ecourts.gov.in/hcservices/	:	Mr.TV.Kathirvelu, senior counsel for Mr.T..Sekar
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For Respondent : Mr.A.Ramar, Additional Public Prosecutor

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COMMON JUDGMENT

(Judgment of the Court was delivered by **P.KALAIYARASAN, J.**)

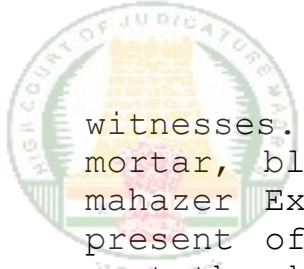
These two criminal appeals are directed against the judgment of the Sessions Judge, Mahila Court, Tirunelveli, dated 08.07.2015, in S.C.No.42 of 2011 convicting and sentencing A1 for the offence under Section 302, 457 and 397 of I.P.C. and A2 for 397 read with 109 of I.P.C. Since both appeals arise out of the same judgment, a common judgment is passed.

2.The case of prosecution as disclosed from the evidence is as follows:

2.1. A1 to A4 are friends. They hatched up a conspiracy just 10 days prior to the date of occurrence i.e. On 07.12.2009, to murder one Mariammal of Puliyur Vengitachalapuram village, after robbing her jewels. A1 to A3 went to the village on 07.12.2009 at about 9.30 p.m. in a motorcycle bearing Registration No.TN 76 X 2242 and A1 went to the house of Mariammal, leaving A2 and A3 near the temple in the village. A1 trespassed into the house of Mariammal and after having intercourse with her, he committed murder by stabbing her with knife on sternum (near neck). He looted the gold sacred mangalya chain, ear ornaments and cell phone and left the house. He kept the chain and gave the ear ornaments and cell phone to A2 and A3.

2.2. The deceased Mariammal was staying alone in the house as her husband, P.W.4, had gone abroad for avocation. She used to visit her brother's house daily. As she did not turn up on 08.12.2009 morning, P.W.2, sister-in-law of the deceased went to her house and as there was no response, she called her husband, P.W.1. P.W.1, brother of the deceased went along with his wife and saw the deceased lying dead with injury on her neck and noticed missing of jewels from her body. He went to the police station and lodged a complaint, Ex.P1.

2.3. P.W.21, the Sub Inspector of Police, on receipt of the complaint at 08.30 a.m., registered a case in crime No.123 of 2009 under Sections 457, 380 and 302 of I.P.C. in Panavadalichathiram police station. The investigating officer, P.W.23, took up the case in investigation, went to scene of crime and prepared observation mahazer and rough sketch in the presence of the



witnesses. He also recovered bloodstained cement floor and sample mortar, bloodstained bedspread, nighties, cell phone cover under mahazer Ex.P3. He also held inquest over the dead body in the present of panchayatdars and prepared inquest report. Then, he sent the dead body to the Hospital for Postmortem.

2.4. P.W.22, Dr.Velammal, conducted autopsy and found the following injuries:

1) There was a stab injury measuring 3 1/2 x 2 x 4 c.m. depth found very near to the middle of sternum. The sternum was broken and penetrated inside. When the wound was opened for examination, the elbow, the area where the right collar bone joined with sternum and the upper part of the sternum were broken and the right collar bone was found separated. In the internal part, trachea was found severed. The nearby pulmonary artery, veins, blood vessels, nerves are severed. The blood weighing 200 gms. was clotted around the inside of the wound.

2) In the back side of the left side head, there is a wound sized 5 c.m. X 4 c.m. and when it was opened, there is blood clot. No fracture have been found.

3) The lower part of the left earlobe was severed and a triangle shaped part was brought separately.

4) The lower part of right earlobe was severed and a triangle shaped part was brought separately.

5) There is no wound in the external part of vagina and no fluid is present.

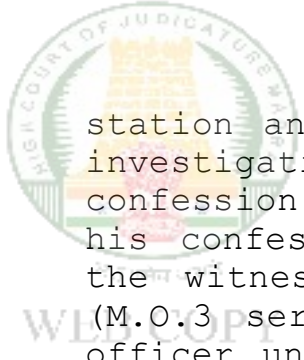
6) In the pervaginal examination, the uterus was seen in normal size. The vaginal discharge taken from the vagina, was sent for examination. Three fingers were able to be inserted into the vagina without any difficulty. When opened, the uterus was empty.

7) The pubic hair in the vagina were found separately. They also were sent for examination.

The internal organs viz., heart, lungs, brain, spleen, kidney (NC), partly digested rice weighing 250 ml found in the stomach with no odour. Intestine is found empty. Hyoid bone intact.

2.5. She opined that the deceased would have died due to hemorrhage and shock because of the injuries sustained by her in sternum (near neck), between 8 to 16 hours before the autopsy.

2.6. On 14.12.2009, at about 07.00 a.m., A2 Muthukumar appeared before P.W.12, the Village Administrative Officer at North Panavadalichathiram, and gave a confession statement, Ex.P6. The Village Administrative Officer went with A2 to the police



station and handed over him with the confession statement. The investigating officer arrested A2 at 09.30 a.m. and recorded his confession statement in the presence of witnesses. Pursuant to his confession statement, A2 took the investigating officer and the witnesses to his house and handed over the ear ornaments (M.O.3 series) and the same was recovered by the investigating officer under mahazer. The investigating officer arrested A1 at 01.00 p.m. on the same day and recovered sacred mangalya chain from him under the mahazer. He recorded the confession statement given by him. Pursuant to the confession statement, A1 took the investigating officer and the witnesses and identified the motor bike belonging to Rajesh Kannan and the same was recovered. He, then, took them to his plantain grove and took out the bloodstained pant and shirt and handed over. The investigating officer recovered the same in the presence of witnesses under mahazers. The properties recovered were sent for chemical examination. The confession statement of A2 was also recorded by the Judicial Magistrate, The investigating officer examined the witnesses and recorded their statements. His successor, P.W.22, after completing the investigation, laid charge sheet.

3. The incriminating evidence found against the accused were put to them by examining under Section 313(1)(b) of Cr.P.C., by the trial Judge and they denied the evidence as false. On the side of the accused, two witnesses were examined. After analysing the evidence, the trial Judge found A1 guilty for the offences under Sections 302, 457 and 397 of I.P.C. and sentenced him to undergo life imprisonment, 5 year R.I and 7 years R.I. Respectively and fine of Rs.2,000/- for each offences with usual default sentence. The trial Judge convicted A2 for the offence under Section 397 read with 109 of I.P.C and sentenced him to undergo 7 years R.I with Rs.2,000/- fine with usual default sentence. The trial Court acquitted A3 and A4. Aggrieved by the judgment, A1 and A2 have preferred these two appeals separately.

4. The learned senior counsel for the appellants in both appeals strenuously argued that there is no last scene theory; that the extra judicial confession given to a Village Administrative Officer, who has been a Village Administrative Officer of a place at a distance of 30 Kms is not believable that too, when A2, who gave the confession is a stranger to the Village Administrative Officer. He further contends that the confession statement recorded by the Judicial Magistrate under Section 164 of Cr.P.C., cannot be relied upon as the same was recorded without giving any reflection time to the accused. Even the report of the DNA test, cannot be accepted as there is no evidence for collection of sample from the first accused for the DNA test. The evidence of P.W.13, who was a witness to the confession statement of A2, who gave the confession is not believable as the bridge stated by the witness is not in existence. Therefore, both the appellants are to be acquitted, giving benefit of doubts.



5. The learned Additional Public Prosecutor, per contra, contends that the entire case of the prosecution is based on the circumstantial evidence and scientific evidence. A2 has not confessed the guilt once, but, thrice before different authorities. The Judicial Magistrate, after satisfying himself that A2 came forward to give confession voluntarily, recorded the confession statement, that too, after recording that A2 did not want any reflection time. There are documentary evidence for collection of sample and analysis by the Forensic Sciences Department. There is no confusion in the evidence of P.W.13 as to where the Solaiseri bridge is situate and therefore, the Mahila Judge, after analysing the evidence has rightly convicted A1 and A2.

6. The consistent case of the prosecution is that A1 along with A2 and A3, went in a bike to the village of the victim Mariammal and leaving A2 and A3 near the temple, A1 alone went to the house of Mariammal at 10.30 p.m. on 07.12.2009. He entered into the house, had intercourse with Mariammal and afterwards, he murdered her by stabbing on her sternum with a knife and left the house with the gold chain, ear ornaments and cell phone.

7. It is also the case of prosecution that before going to the village, A1 stated to A2 and other accused that after intercourse, he would kill Mariammal and loot her jewels. A1, after murdering Mariammal, came and gave ear ornaments to A2.

8. There is no eye witness to the occurrence. The entire prosecution is based only on circumstantial evidence. The available evidence to connect the accused 1 and 2 with the crime are as follows:

- (i) extra judicial confession of A2 before P.W.13;
- (ii) confession statement of A2 before the investigating officer;
- (iii) confession statement of A2 before the Judicial Magistrate;
- (iv) recovery of ear studs from A2, pursuant to the confession statement given to the investigating officer;
- (v) confession statement of A1 before the investigating officer;
- (vi) recovery of gold chain from A1 and bloodstained pant and shirt from A1 under mahazer, pursuant to his confession;

(vii) serologist report depicting the blood group of the accused through material objects, recovered from A1 and A2 with the blood group of deceased; and



(vii) DNA test of the smear in vagina with the blood sample collected from A1.

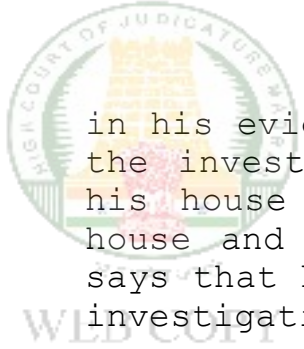
9. The occurrence took place on 07.12.2009 night. On 14.12.2009, 07.00 a.m., the second accused appeared before P.W.13, Village Administrative Officer and gave confession statement, Ex.P6. No doubt, A2 is a stranger to P.W.13 and he is not the Village Administrative Officer of the village, where the second accused resides and on the same day, he was handed over to the police and A2 gave confession statement to the investigating officer in the presence of P.W.13, another Village Administrative Officer. He was remanded to Judicial custody. When he was in judicial custody in prison, a requisition was given to the Judicial Magistrate for recording his confession statement on 16.12.2009. P.W.15, Judicial Magistrate directed A2 to be produced on 17.12.2009.

10. Thus, the second accused was produced before the Judicial Magistrate from the prison on 17.12.2009 and the Judicial Magistrate, after giving requisite waiting A2, asked him as to whether he wanted reflection time to give statement. For that, A2 answered that he did not want any reflection time. The Judicial Magistrate, thus after explaining to the second accused that he is not bound to make a confession and if he does so, it may be used as evidence against him and after satisfying himself that A2 came forward voluntarily to give confession statement, he recorded the confession statement of A2 in the manner provide under Section 281 of Cr.P.C. In the confession statement, A2 signed.

11. The Judicial Magistrate has also made a memorandum at the foot of the statement as required under Section 164 of Cr.P.C. in his own handwriting. There is no mandatory rule of law that a confession recorded without allowing time for reflection must be declared as inadmissible. Section 164 of Cr.P.C. does not lay down any rule for giving time for reflection before recording a confession. The Judicial Magistrate, after questioning the second accused got satisfied himself that the accused came forward voluntarily to give confession statement and recorded the same, only after the assertion of the accused that he did not want any reflection time. Therefore, the confession statement recorded by the Judicial Magistrate, Ex.P19, is unassailable and can be relied upon. The earlier confession statement of A2, one before the Village Administrative Officer and another before the investigating officer are inconsonance with the statement given to the Judicial Magistrate and therefore, the contention of the learned counsel for the appellants that the confession statement made by A2 before P.W.12, Village Administrative Officer, and the investigating officer are unreliable cannot be accepted.

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12. A2 admits before the Judicial Magistrate in his statement, Ex.P19, that he received the ear ornaments from A1. P.W.13 says

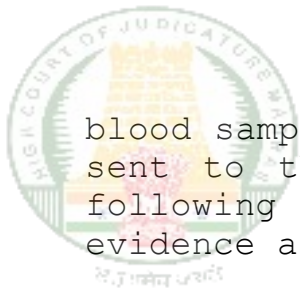


in his evidence that pursuant to the confession statement, A2 took the investigating officer and the witnesses, including P.W.13 to his house and took out the ear ornaments from the roof of his house and handed over to the investigating officer. He further says that he signed in the recovery mahazer, Ex.P9 prepared by the investigating officer.

13. The learned senior counsel for the appellant mainly contends that the evidence of P.W.13 is unreliable on the ground that the place of arrest of A1 mentioned by A1 is not situate as he stated. From perusal of the whole evidence, both chief as well as cross examination of P.W.13, it is clear that A2 was arrested only at Solaiseri bridge and the same has been corroborated by the investigating officer. No doubt, as per the evidence of D.W.1, no bridge is situate in between Sankarankovil and Karivalamvanthanallur. It does not mean that there is no bridge in Solaiseri. Therefore, there is no confusion as to the fact that bridge is situate near Solaiseri, where arrest of A1 was made as stated by P.W.13 and the investigating officer. Thus, the recovery through A2 has been proved through the evidence of P.W.13 and the investigating Officer. That apart, there is also confession statement of A2 before the Judicial Magistrate, P.W.15.

14. P.W.13 says that gold chain was recovered from A1 at the time of arrest, and pursuant to his confession, motor bike was recovered from the house of Rajesh Kannan. He further states that pursuant to the confession statement, A1 took the investigating officer and the witnesses, to his plantain grove and took out the pant and shirt and handed over to the investigating officer and the above properties were recovered under mahazers. Investigating Officer has also corroborated the same. As already pointed out, the evidence of P.W.13 is believable and trustworthy and the same could not be shattered during cross examination.

15. P.W.22, Doctor, who conducted autopsy has deposed that vaginal discharge of the deceased was collected and preserved for examination. P.W.17, Assistant Director of Forensic Sciences has deposed about the DNA test and the reports are marked as Exs.P23 and 24. From the evidence of P.W.17 and the above documents, it is clear that along with the letter, blood sample collected from A1 Vairamuthu and the vaginal discharge of the deceased preserved at the time of autopsy were sent for chemical examination. After comparative examination of the same, P.W.17 concluded that from the DNA typing results of the samples, Vairamuthu is the source of DNA present in the whitish smear collected from the vaginal of the deceased. At the time of committal proceedings, entire case records have been committed from the Judicial Magistrate to the Services, Courts and Prison Department and therefore, all the letters and materials form part of the case records. It is clear from the letters sent by the Judicial Magistrate to the Forensic Science Department that



blood sample was collected from the first accused and the same was sent to the Forensic Sciences Department, with proper seal, by following procedures. Therefore, the argument that there is no evidence as to the collection of blood sample is not acceptable.

16. Thus, the above scientific evidence establishes that A1 was with the deceased just before her death.

17. The gold chain recovered from A1, marked as M.O.2 has been identified by P.W.2, as that of her sister-in-law, the deceased Mariammal. As already discussed, recovery of gold chain, shirt and pant from A1, pursuant to his confession statement has been proved.

18. The serologist report is marked as Ex.P22. This depicts that the gold chain M.O.2, recovered from A1 contains group 'B' blood, which is that of the deceased as detected from the material objects recovered from the scene of crime. The shirt recovered from A1 is also found with human blood.

19. From the above evidence, it is very clear that A1 trespassed into the house of the deceased and murdered her, after having intercourse and committed robbery and the trial Court has also rightly convicted him for the offence under Section 302, 457 and 397 of I.P.C.

20. As far as A2 is concerned, he made confession that A1 stated his plan to him and he accompanied A1 to the village of Mariammal and he was left near the temple. He did not go to the house of Mariammal with A1. He also confessed that A1 gave the ear ornaments to A2. Pursuant to the confession statement before the investigating officer, ear ornaments viz., M.O.3 series, was recovered from him. As already discussed, the said recovery has been established. P.W.2, sister-in-law of the deceased in her evidence also identified M.O.3 as that of the deceased. The serologist report Ex.P22 also discloses the detection of blood group 'B' in the above said ear ornaments, M.O.3 series, which tallies the blood group of the deceased. From the confession as well as the above recovery, it is clear that A2 having known the plan of A1 went with him to the village of the deceased and after the occurrence parted with the stolen jewels and therefore, the trial Court has rightly convicted him for the offence under Section 397 read with 109 of I.P.C.

21. For the aforesaid reasons, this Court does not find any reason to interfere with the conviction and sentence passed by the trial Court in its judgment. Therefore, these criminal appeals are liable to be dismissed. Accordingly, the trial Judge is directed to secure the appellants/A1 and A2, to undergo the remaining period of sentence.



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Sd/-

Deputy Registrar (J)

Sub Assistant Registrar

To

- 1.The Sessions Judge, Mahila Court,
Tirunelveli.
- 2.The Chief Judicial Magistrate,
Tirunelveli.
- 3.The Judicial Magistrate,
Sankarankovil.
- 4.The Director General of Police,
Mylappore,
Chennai-4.
- 5.The Collector,
Madurai District,
Madurai.
- 6.The Inspector of Police,
Panavadalichathiram Police Station,
Tirunelveli District.
- 7.The Superintendent,
Central Prison,
Palayamkottai.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.K.Prabhu, Advocate, Sr.No: 82831

Arul

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Pre-Delivery Judgment made in
Criminal Appeal (MD) Nos.169 and 170 of 2015

21.12.2016