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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

AND

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**
CRL.A[MD].Nos.206 of 2015 and 149 of 2016

A.Subramani : Appellant/Accused No.4 in **CRL.A[MD].No.206 of 2015**
Manikandan : Appellant/Accused No.3 in **CRL.A[MD].No.149 of 2016**

Vs.

The State rep by
the Inspector of Police,
Sinthamani Police Station,
Karur District, [Crime No.62 of 2012]. : Respondent

PRAYER: Appeals are filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 05.08.2015 made in S.C.No.43 of 2013, on the file of the learned Sessions Judge, [Mahila Fast Track Court] Karur.

For Appellant : Mr.A.Chandrakumar
in Crl.A.(MD).No.206 of 2015
For Appellant : Mr.T.Senthilkumar
in Crl.A.(MD).No.149 of 2016
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

Reserved : on 07.10.2016
Pronounced : on 21.10.2016

COMMON JUDGMENT

S.NAGAMUTHU, J.

The appellant in Crl.A.(MD).No.149 of 2016 is the third accused and the appellant in Crl.A.(MD).No.206 of 2015 is the fourth accused in S.C.No.43 of 2013, on the file of the learned Sessions Judge, [Mahila Fast Track Court] Karur. There were two other accused, by name, Mr.S.Murugan and Mr.P.Andichamy, who were arrayed as accused Nos.1 and 2 in the case. The Trial Court framed as many as three charges against the accused, as detailed below.

Charge	Accused	Penal Provisions
1	1 to 3	302 IPC
2	1 to 3	392 IPC
3	4	414 IPC

By Judgment dated 05.08.2015, the Trial Court convicted all the four accused, as detailed below:-

Accused	Section of Law	Sentence	Fine amount
1 to 3	302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for three months.
1 to 3	392 IPC	To undergo rigorous imprisonment for ten years.	Rs.1,000/- in default to undergo simple imprisonment for three months.
4	414	To undergo rigorous imprisonment for three years.	Rs.1,000/- in default to undergo simple imprisonment for three months.

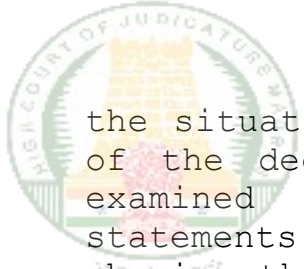
The sentences imposed on the accused Nos.1 to 3 have been ordered to run concurrently. Challenging the said conviction and sentence, the appellants/the accused Nos.3 and 4 have come up with these Criminal Appeals.

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

The deceased, in this case, was one Mrs.Alagurani. PW-1 and PW-2 are the sons of the deceased. The husband of the deceased died few years before the occurrence. PW-1 and PW-2 were already married and therefore, they were living separately. The deceased alone was residing in a farm house at Seethapatti Village. She used to sell milk to the local Milk Society. She was lastly alive at her farm house on 28.03.2012.

2.1. On 30.03.2012, PW-2 had gone to the farm house of the deceased around 07.00 AM. But, the deceased was not seen in the house. PW-2 did not take it seriously. On the same day, at 05.30 PM, PW-1, yet another son of the deceased, had gone to the farm house of the deceased. He also could not find the deceased anywhere in the house. Then, he went in search of the deceased. To his shock, he found the deceased lying dead in a new building under construction nearby the farm house. There were no external injuries found on the body of the deceased. The dead body was found in a decomposed condition. PW-1, immediately, went to the Sinthamani Police Station and made a complaint at 09.15 PM, on 30.03.2012. On the basis of the said complaint, a case was registered in Crime No.62 of 2012 under Section 174 of the Code of Criminal Procedure [suspicious death]. EX-P1 is the complaint and EX-P22 is the First Information Report.

2.2. PW-24, the then Inspector of Police, took up the case for investigation. At 06.00 PM, on 31.03.2012, PW-24 proceeded to the place of occurrence, where he found a huge crowd of people. Since

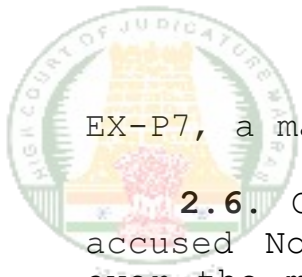


the situation was so tensed, he immediately shifted the dead body of the deceased to the Government Hospital at Karur. Then, he examined PW-1, PW-2 and few more witnesses and recorded their statements. He prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. On going over to the hospital, he conducted inquest on the body of the deceased. EX-P24 is the inquest report.

2.3. PW-19 - Dr.M.Ramasamy conducted autopsy on the body of the deceased, at 11.15 AM, on 31.03.2012. EX-P19 is the postmortem certificate. He found neither external injury nor internal injury on the dead body of the deceased. Intact brain was completely liquified. All the internal organs were also highly decomposed. Hyoid bone was sent for chemical examination. The report revealed that there was postmortem separation of joints and no antimortem fractures were noticed. Since the dead body of the deceased was in a highly decomposed condition, he was not able to give any opinion regarding the cause of death. However, he gave opinion that the death of the deceased should have occurred 72 hours prior to the autopsy. Then, PW-24 gave a questionnaire to PW-19. Based on the reply given by him, PW-24 altered the case into one under Sections 302 and 392 of the Indian Penal Code. EX-P26 is the alteration report.

2.4. At 11.15 AM, on 06.04.2012, in the presence of the witnesses, PW-24 arrested the accused Nos.1 to 3. On such arrest, the accused Nos.1 to 3 gave independent voluntary confessions one after the other. In his confession, the first accused disclosed the place, where he had hidden a sum of Rs.300/-. Similarly, he disclosed that he had pledged a pair of gold ear studs and a gold mottal at Manappuram Finance Company Limited, through one Mr.Muthusamy [PW-14]. The second accused gave a voluntary confession, in which he disclosed the place, where he had hidden a nose screw and a sum of Rs.200/-. The third accused gave a voluntary confession, in which he disclosed the place, where he had hidden a gold nose screw and a sum of Rs.150/-.

2.5. In pursuance of the same, the first accused took the police and the witnesses to his house and produced a sum of Rs.300/-. Then, he identified one Mr.Murugan, to whom he had given a pair gold ear studs. The said Mr.Murugan identified Mr.Muthusamy [PW-14], who in turn disclosed that he had pledged the above said ear studs with Manappuram Finance Company Limited. In pursuance of the same, the above said ear studs were recovered. In pursuance of the confession made by the second accused, he took the police and the witnesses and produced a single nose screw with a precious stone, [MO-2], which were recovered under a mahazer. In pursuance of the disclosure statement by the third accused, he took the police and the witnesses to his house and produced a nose screw and a sum of Rs.150/- from his house, which were recovered under



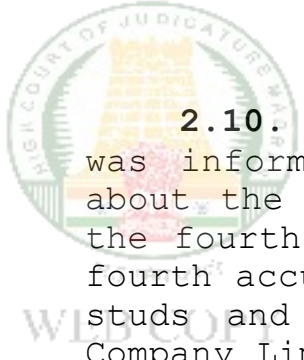
EX-P7, a mahazer.

2.6. On returning to the Police Station, PW-24 forwarded the accused Nos.1 to 3 to the Court for judicial remand and handed over the material objects also to the Court. On the same day, at 05.30 PM, PW-24 arrested the fourth accused at Erioadu Village in the presence of the witnesses. On such arrest, he gave a voluntary confession, in which he disclosed that he had handed over the jewels to Mr.Muthusamy, through whom, they were pledged with Manappuram Finance Company Limited. Then, the fourth accused produced a Cellphone with IMEI No.359041045329019. PW-24 recovered the same under EX-P27, a mahazer. Then, he forwarded the fourth accused to the Court for judicial remand and handed over the material objects also to the Court for chemical examination. On completing the investigation, he laid charge sheet against the accused.

2.7. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 24 witnesses were examined, 33 documents and 13 material objects were marked.

2.8. Out of the said 24 witnesses, PW-1 has stated that on 28.03.2012, the deceased lastly came to his house and thereafter, she was not seen. PW-2 has stated that at 07.00 AM, on 30.03.2012, he went to the house of the deceased. However, the deceased was not found anywhere. He has further stated that he did not take it seriously. PW-1 had again gone to the farm house at 05.30 PM, 30.03.2012. The deceased was not seen at her house. When he searched for the deceased, he found the dead body of the deceased, near the building under construction.

2.9. PW-3 and PW-4 have turned hostile and they have not supported the case of the prosecution in any manner. PW-5, a resident of Kurunikulathupatti Village, has stated that he heard about the occurrence. PW-6, a resident of Seethapatti Village, has stated that he informed the second accused that the first accused, who came to the society, left the society, after delivering milk. PW-7, yet another resident of Kurunikulathupatti Village, has stated that at 09.00 AM, on 28.03.2012, three unknown persons came to him and asked about the farm house of the deceased. PW-8 has not stated anything incriminating against the accused. PW-9 has spoken about the preparation of Observation Mahazer and the Rough Sketch. PW-10 has spoken about the recovery of bloodstained earth and sample earth from the place of occurrence. PW-11 and PW-12 have turned hostile and they have not supported the case of the prosecution in any manner.



2.10. PW-13, the daughter of the deceased, has stated that she was informed about the occurrence by PW-1. She has also spoken about the complaint made by PW-1. PW-14 has stated that he knew the fourth accused. He has further stated that on 30.03.2012, the fourth accused came to him and wanted to pledge a pair of gold ear studs and mottal. He pledged the same with Manappuram Finance Company Limited, received a sum of Rs.7,500/- and gave the same to the fourth accused. PW-15, the Manager of Manappuram Finance Company Limited, has spoken about the pledging of a pair of gold ear studs and mottal by PW-14 and also issuance of receipt.

2.11. PW-16, a Junior Scientific Officer, has spoken about the chemical examination conducted by him on the viscera organs. PW-17, Dr.G.Renugadevi, has stated that on examination of hyoid bone, she found that there was no antimortem fracture in the hyoid bone, but joints were separated. PW-18, a Scientific Officer, has spoken about the chemical examination conducted by him on the material objects. PW-19, Dr.M.Ramasamy, has spoken about the autopsy conducted by him, but, he could not give final opinion regarding the cause of death, as the dead body of the deceased was found in a highly decomposed condition. PW-20, a Head Constable, has stated that he handed over the complaint and the First Information Report to the learned Judicial Magistrate No.I, Kulithialai, on 31.03.2012, as directed by the Investigating Officer. PW-21, a resident of Kurunikulathupatti and running a hotel, has stated that three years before, the deceased called him over phone and informed that she engaged three persons to work in her farm house and requested him to provide meals to them. PW-22, a Grade I Constable, has stated that he handed over the dead body to the hospital for postmortem, as directed by the Investigating Officer. PW-23 has spoken about the registration of the case, on the complaint made by PW-1. PW-24 has spoken about the investigation conducted by him and the filing of final report.

2.12. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Their defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellants, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants/the accused Nos.3 and 4 are now before this Court with these Criminal Appeals.

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

<https://hcservices.courts.gov.in/hcservices/> 4. This is a case based on circumstantial evidence. There is no denial of the fact that at her farm house, at Seethapatti



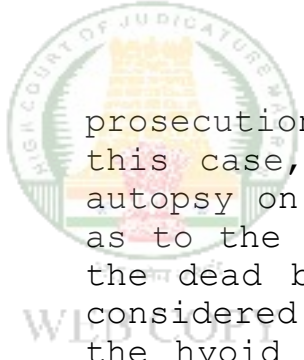
Village, the deceased alone was residing. According to PW-1, on 28.03.2012, the deceased lastly came to his house and thereafter, she was not seen by anybody. PW-2 has stated that at 07.00 AM, on 30.03.2012, he visited the house of the deceased. But, the deceased was not found anywhere. He has further stated that he did not take it seriously. PW-1 had again gone to the farm house at 05.30 PM, on 30.03.2012. The deceased was not seen at her house. When he searched for the deceased, he found the dead body of the deceased near the building under construction. Thus, it has been clearly established by the prosecution that the deceased had died sometime between 07.00 AM, on 28.03.2012 and 05.30 PM, on 30.03.2012. It is the case of the prosecution that the deceased was killed by smothering, by closing her mouth and nose. Thus, according to the case of the prosecution, the death of the deceased was a homicide.

5. The learned counsel for the appellants would submit that absolutely, there is no evidence to prove that the deceased had died of homicidal death. In this regard, we have to refer to the evidence of PW-19, Dr.M.Ramasamy, who conducted autopsy on the body of the deceased, at 11.15 AM, on 31.03.2012. As we have already pointed out, PW-19 has stated that the dead body of the deceased was in a highly decomposed condition. Intact brain was completely liquified. The cause of death, therefore, could not be ascertained. He found neither external injury nor internal injury on the dead body of the deceased. He told that on 20.10.2012, PW-24 gave a questionnaire seeking clarification of six queries made by him.

6. The first query was as to whether the death of the deceased would have occurred by closure of mouth and nose, for which, PW-19 has answered that there was possibility. But, during cross-examination, he has stated that the definite cause for the death cannot be stated, because the body was in a highly decomposed condition. It is common knowledge that if mouth and nose are closed, due to smothering, death would quite naturally occur. This is the general opinion given by PW-19 also. However, in the instant case, whether the death of the deceased was due to closure of mouth and nose has not been established at all. Thus, the prosecution has failed to prove that the deceased had died due to homicidal violence. The very fact that there was no external injury or any internal injury on the dead body of the deceased would go to show that the death of the deceased was due to natural cause cannot be ruled out. Nowhere it has been elicited by the doctor that the death, in this case, would not have occurred due to some natural cause.

7. In a case of this nature, since there was no external injury (except injury to ear lobes) or internal injury on the dead body of the deceased, it is, absolutely, necessary for the

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prosecution to rule out the possibility of the natural death. In this case, there is a positive evidence of PW-19, who conducted autopsy on the dead body of the deceased, that no definite opinion as to the cause of death could be given, because of the fact that the dead body was found in a decomposed condition. Thus, in our considered view, the doctor had found that the injury was only to the hyoid bone and there is no evidence that the said injury was antimortem. Thus, absolutely, there is no evidence that the death of the deceased was on account of homicide.

8. It is stated that the accused Nos.1 to 3 were arrested by PW-24, on 06.04.2012. On such arrest, it is alleged that the accused Nos.1 to 3 gave independent voluntary confessions. It is further alleged that from and out of the disclosure statement made by the first accused, a sum of Rs.150/- was recovered and from and out of the disclosure statement made by the second accused, a sum of Rs.200/- and a nose screw were recovered. But, these recoveries made on the disclosure statements made by these accused is not relevant for the purpose of deciding these Criminal Appeals.

9. So far as the third accused is concerned, it is alleged that on the disclosure statement made by him, a nose screw and a sum of Rs.150/- were recovered. It is the case of the prosecution that the said nose screw allegedly recovered from the possession of the third accused was lastly worn by the deceased. But, unfortunately, in EX-P1, there is no mention about the missing of the nose screw at all. There is only a mention about the missing of a covering chain, an ear stud and a Mottal. Had it been true that a nose screw was also found missing, certainly, PW-1 would have mentioned the same in EX-P1. PW-1 has got no explanation as to why he did not mention about the missing of the nose screw in EX-P1. Thus, it is difficult for us to believe that there was missing of nose screw also from the dead body of the deceased. If the same is disbelieved, we find no other evidence against the third accused.

10. So far as the fourth accused is concerned, it is the case of the prosecution that the first accused gave a Cellphone, a pair of gold ear studs and gold mottal to the fourth accused. It is the further case of the prosecution that the fourth accused gave the same to one Mr.Muthusamy, [PW-14], who, in turn, pledged the same with Manappuram Finance Company Limited. But, absolutely, there is no evidence to prove that the said jewel was handed over by the first accused to the fourth accused. Though PW-14 has stated that on 30.03.2012, the fourth accused gave these two jewels [MO-3 and MO-4] and wanted to pledge the same and thereafter, he pledged the same with Manappuram Finance Company Limited, during cross-examination, he has stated that the fourth accused was not known to him. When that be so, it is difficult to believe that the fourth accused would have chosen PW-14 and handed over



the jewels and pledged the same. Thus, we are unable to make any reliance on the evidence of PW-14. If once the evidence of PW-14 is disbelieved, then, there is no other evidence to prove that these jewels were in the possession of the fourth accused. If once this part of the case of the prosecution is rejected, then, we cannot give any credence to the further case of the prosecution that the Cellphone [MO-5] was recovered from the fourth accused. Assuming that the said Cellphone was recovered from the possession of the fourth accused, there is no other evidence to prove that the said Cellphone belonged to the deceased. With reference to IMEI No.359041045329019, there was no investigation conducted to prove that the said Cellphone belonged to the deceased.

11. In a case of this nature, the prosecution is required to prove the circumstances projected by it beyond reasonable doubt and all such proved circumstances should establish a close link with each other and form a complete chain unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt of the accused.

12. Here, in this case, the prosecution has failed to prove any of the incriminating circumstances, more particularly, the prosecution has failed to prove that the death of the deceased was a homicide. Thus, in our considered view, the prosecution has failed to prove the case beyond reasonable doubts. However, the Trial Court has convicted the appellants/the accused Nos.3 and 4 on mere surmise, which is not permissible in law. Thus, in our considered view, the appellants/the accused Nos.3 and 4 are entitled for acquittal.

13. In the result, these Criminal Appeals are allowed; the conviction and sentence imposed on the appellants/the accused Nos.3 and 4, by Judgment dated 05.08.2015, made in S.C.No.43 of 2013, on the file of the learned Sessions Judge, [Mahila Fast Track Court] Karur, is set aside and the appellants/the accused Nos.3 and 4 are acquitted. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond executed by the appellants and the sureties shall stand terminated.

Sd/-

Assistant Registrar (CO)

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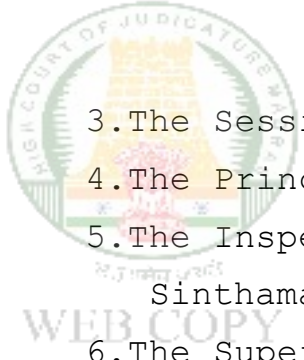
Sub Assistant Registrar

To

1.The Judicial Magistrate No.I, Kulithalai.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The Chief Judicial Magistrate, Karur.



3.The Sessions Judge, [Mahila Fast Track Court] Karur.

4.The Principal Sessions Judge, Karur.

5.The Inspector of Police,

Sinthamani Police Station, Karur District,

6.The Superintendent, Central Prison, Trichy.

7.The District Collector, Karur District.

8.The Director General of Police, Chennai.

9.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.T.SENTHILKUMAR, Advocate, SR No.63152

+1 CC to Mr.A.CHANDRAKUMAR, Advocate, SR No.62999

**COMMON JUDGMENT MADE IN
CRL.A[MD] .Nos.206 of 2015 and 149 of 2016
21.10.2016**

SH/DB/SAR-1:11.11.2016:9P/12C