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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal (MD) No.21 of 2016

Murugan @ Thirumalaimurugan

.. Appellant/Sole Accused

Vs.

State through the Inspector of Police,

Thalavaipuram Police Station.

.. Respondent/Complainant

(Crime No.453 of 2010)

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records in S.C.No.48 of 2011, on the file of the Principal Sessions Judge, Virudhunagar, by the order dated 23.06.2014 and set aside the conviction and sentence passed against the appellant.

For Appellant : Mr.N.Ananthapadmanaban

For Respondent : Mr.C.Ramesh

Assistant Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by **M.V.MURALIDARAN, J.**)

The appellant is the sole accused in S.C.No.48/2011 on the file of the Principle District & Sessions Judge, Virudhunagar District at Srivilliputhur. The Trial court framed charges under Sections 450, 302 and 392 of I.P.C against this Appellant/Accused.

2.The Trial Court by Judgment dated 23.06.2014 convicted and sentenced the appellant to undergo 5 years rigorous imprisonment for the offence under Section 450 of I.P.C, convicted and sentenced to undergo Life Imprisonment under Section 302 of I.P.C, and convicted and sentenced to undergo seven years rigorous imprisonment under Section 392 of I.P.C. All the sentences shall run concurrently. The set off was allowed under Section 428 of Cr.P.C. Challenging the said conviction and sentence passed against her, the present appeal has been filed by the appellant/accused.



3. The case of the prosecution is that the accused Murugan @ Thirumalai Murugan was resided as tenant in the line house of PW-1 Ramasamy 10 years back. Thereafter 5 years back, the accused had worked in Sizing Mill belonged to one Palanisamy at Somanur where he received an advance amount of Rs.35,000/-. The accused stopped to go for work in Palanisamy Sizing Mill, when he had balance advance amount with him, he went to Chithra Jothi Sizing Mill and received advance amount of Rs.35,000/-. Thereafter 2 months prior to the date of occurrence, the accused had shifted his residence to nearby the house of PW-1, Ramasamy at Malaiyamman Kovil Street, Seithur belonged to one Mariyammal. Then again the accused had shifted his residence to his Mother-in-law's house at Illathur. When the accused was asked to repay the advance amount received from Chithra Jothi Sizing Mill through his uncle Chelliah, the accused decided to rob money from the house of PW-1 due to financial crisis, where he had seen large quantity of money. On 18.11.2010 at 7.45 P.M the accused Murugan @ Thirumalaimurugan entered into the house of PW-1, Ramasamy where, PW-1's wife Annalakshmi on seeing he accused went to prepare Tea for him, the accused searched Bureau Key and the same was questioned by Annalakshmi, the accused murdered her by closing her mouth and pulled her into the floor and stabbed with knife indiscriminatingly on her left chin, above right side ear, head and took Grinder Stone and beaten up Annalakshmi with grinder stone on her chest and chin. The accused had robbed 6 Sovereign gold chain worth about 76,000/- and $\frac{1}{2}$ Sovereign Thali and $\frac{1}{2}$ Sovereign ear-stud from the deceased. Hence the respondent police have registered a case in Crime No.453/2010 under sections 450, 392 and 302 of IPC as per the complaint of the husband of the deceased.

4. After filing the charge sheet before the Learned Judicial Magistrate, Rajapalayam in P.R.C.No.11 of 2011, the case was made over to the Learned Principal District & Sessions Judge, Virudhunagar District at Srivilliputhur and the same was numbered as S.C.No.48/2011. In this case, 28 witnesses were examined as prosecution side witnesses and 17 Exhibits were marked on the side of prosecution and there are 16 material objects produced before the Trial court. But there was no witness and exhibits on the side of the accused.

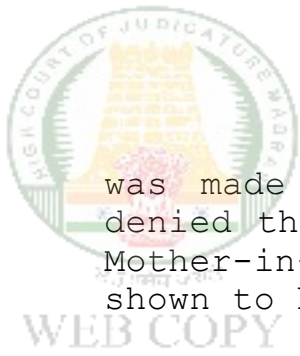
5. In this case, PW-1 Ramasamy deposed that the deceased Annalakshmi is his wife. He knows the accused Thirumalaimurugan and he lived as tenant for 2 years in his house. PW-1 solemnized the marriage of the accused and his sister. PW-1 was running grocery shop. On 18.11.2010 the PW-1's wife went to a marriage reception by wearing her jewels. On 18.11.2010 after closing the



shop, PW-1 returned to home at 9.10 P.M and found no light in the house. Hence PW-1 used torch light and found his wife was in pool of blood. The PW-1 shouted and on hearing the same, his son Vaithilingam who slept nearby the room, came out from the room and saw the dead body of his mother and shouted. Thereafter the neighbours came to the spot. The PW-1 noticed injuries on left chin, chest and lower chin of the dead body and found blood stained coir bag and grinder stone. The PW-1 stated that the jewels weared by his wife were found missing. The PW-1 along with his son lodged a complaint before the Thalaivaipuram Police Station for the death of his wife and the same was registered in Crime No. 453/2010 (Ex-P1).

6.The PW-1 further deposed that he received phone call after 25 days from Thalaivaipuram Police, so PW-1 and his daughter-in-law went to the police station at 3 P.M, where he identified the jewels of his wife and at that time, the accused was present in the police station. The PW-1 further stated that he came to know that the jewels were recovered from the accused. The PW-1 received the jewels of his wife from Judicial Magistrate, Rajapalayam and produced the same before the court. The PW-1 also stated that M.O.1 and M.O.2 gold chain and flower model ear-stud one pair are that of his wife and he identified M.O.3 to M.O.8 those material objects were found in the place of occurrence. The PW-1 deposed that the murder of his wife was happened only to rob her jewels.

7.The PW-2 deposed that now she is residing in Vanamoorthy Lingam Street at Muthusubbiahpuram. The PW-1 is her father-in-law and deceased Annalakshmi is her Mother-in-law and her husband is Vaithiyalingam, PW-19. Her husband was working as Electrician at Dubai and he came for holidays at the time of occurrence. Since PW-2's husband weared malai for Lord Ayyappa, he used to sleep at her Father-in-law's house. She deposed that she knows about the gold articles of her Mother-in-law. On 18.11.2010, there was a marriage reception of Karpagavalli, D/o. Jothibasu and the deceased attended the reception. The PW-2 stated that her Mother-in-law weared the gold jewels and attended the reception, then gone to her house. The Jewels shown to her was that of her Mother-in-law weared at the time of occurrence. The PW-2's husband went to his father's house at 9 P.M. At about 9.30 P.M. when PW-2 was in her house, the neighbors informed her that her Mother-in-law was murdered. The PW-2 found the dead body of her Mother-in-law in pool of blood with injuries on her body. Then PW-1 and PW-2's husband went to police station and lodged a complaint. The PW-2 in her cross stated that M.O.1 Thali Chain shown to her was a new one and it



was made one year prior to the date of occurrence. She also denied the suggestion put to her that she did not know when her Mother-in-law purchased the new Thali and the M.O.1 Thali Chain shown to her was not that of her Mother-in-law.

8.The P.W-3, Muthulakshmi deposed that she is residing in Vanamoorthy Lingam Street at Muthusubbiahpuram. She knows deceased Annalakshmi who is the wife of her uncle Ramasamy. Before 3 ½ years back at about 9.30 P.M, she heard alarm voice. The PW-3 and her husband went to the house of her uncle, where they found the dead body of Annalakshmi. The PW-3 further deposed that M.O.1 and M.O.2 jewels shown to her that were that of her deceased Annalakshmi. At the time of occurrence, the said jewels were found missing from the neck of the deceased Annalakshmi. She was enquired by the police with regard to the above said occurrence. The PW-3 stated in her cross that she and PW-1 has been residing in the nearby houses. The PW-3 in her cross denied the suggestion put to her that M.O.s 1 & 2 shown to her were not that of Annalakshmi.

9.The PW-4 Sivakaminathan deposed that he is running a tea stall at Thalaivaipuram bus stand. About 10 years back, the accused Thirumalaimurugan took lease of his house for Rs.55,000/- and resided therein. He further deposed that the native of accused is Tenkasi and they came to Thalaivaipuram from Tenkasi for avocation. Subsequently the accused and his family members resided in the house of PW-1 Ramasamy. The PW-4 came to know that the accused murdered the wife of PW-1 and he was enquired by the police.

10.The PW-5 Kannan deposed that he is working as Manager in Somu Mills. The accused Thirumalai Murugan came to the Mill 5 or 6 years back for getting job. The accused came with his mother, elder and younger sisters and wife. The accused before going for work, asked for advance amount of Rs.35,000/- and the same was paid to him. The accused worked there for 2 or 3 months and received salary for the same. Since the accused took leave frequently, he was asked not to come to the Mill. The PW-5 further deposed that the advance amount received by him was not repaid. Thereafter PW-5 came to know that the accused joined in Chithirai Jothi Sizing Mill where also he received an advance amount of Rs.36,000/-. The accused has also not repaid the said advance amount and stopped to come for employment in the said company. Thereafter the PW-5 came to know that the accused ~~murdered the wife of PW-1~~ and he was enquired by the police.



11.The PW-6 Raju deposed that he is working as Manager in Chithirai Jothi Sizing Mill and he knows the accused Thirumalai Murugan. The accused came to their Mill 3 or 4 years back and requested for employment. The accused asked for an advance amount of Rs.35,000/- for the reason stating that he was previously worked at Palanichamy Mill where he received Rs.35,000/- as advance and the same has to be repaid to them. The PW-6 further deposed that after getting permission from his owner, he paid Rs.35,000/- towards advance and Rs.1000/- towards transport expenses. The accused on receipt of the said amount neither come for work nor repaid the advance amount. So the PW-6 contacted the mobile phone number given by the accused and the call was attended by one Chellaiah, uncle of the accused. The PW-6 informed the said Chellaiah that the accused had received advance of Rs.35,000/- but not turned to work and for that the Chellaiah told him that he would bring the accused. But the said Chellaiah brought the mother and sister of the accused and they worked there for one week and thereafter they went to their native place. The accused absconded. Regarding the above said incident the Thalaivaipuram police enquired PW-6.

12.The PW-7 Manikandan deposed that he is residing in Vanamoorthy Lingam Street at Muthusubbiahpuram and the accused is his distance relative. The PW-7 purchased TVS-50 for Rs.3,000/- for the accused and he only inducted the accused as tenant in the house of Mariyammal. Since the accused did not go to any job and not paid the rent, so the owner of the house asked him to vacate the house. The PW-7 enquired by the Inspector of Police, Thalaivaipuram.

13.The PW-11 Shenbagavalli who is the wife of the accused turned as hostile and deposed that she along with her husband, Mother-in-law and Sister-in-law worked as labour at Tiruppur. She also stated that they received advance amount of Rs.35,000/- where they joined first. She further stated that they received an advance amount of Rs.35,000/- in the 2nd Mill and she further admitted that they have not repaid the advance amount.

14.The PW-12 Esakkiyammal deposed that PW-11 is her daughter and the accused is her Son-in-law. The police brought the accused to her house, since the accused stated to the police that he kept the jewels in her house. And she further stated that the police recovered the flower model ear-stud from the PW-13 Chellappa Pawn Brokers Shop.



15. The PW-13 deposed that he is having pledge shop under the name and style of Sri Chellappa Pawn Brokers in East Avani Moola Street, Tenkasi. He knows PW-12 Esakkiyammal and she pledged the flower model ear-stud for Rs.4,900/-. The Jewel pledged by Esakkiyammal was recovered by the police under Ex-P3 and in which the accused put his signature. The PW-16 Marudhu deposed that at the time of preparation of Mahazar, he was present in the place of occurrence and he put his signature in Ex-P4 Mahazar. He also signed in recovery mahazar Ex-P5 for the recovery of M.O-3, 10, 11, 12 & 13 and in this regard he was enquired by the police.

16. The PW-18 Dr.V.Geetha deposed that she conducted autopsy on the dead body of Annalakshmi on 19.11.2010 and noticed the external injuries. The PW-18 Doctor gave Postmortem report Ex-P6.

17. The PW-19 Vaithiyalingam deposed that he was working as Electrician at Dubai. He is residing in Vanamoorthy Lingam Street at Muthu SubbiahPuram. The deceased is his mother, the PW-1 is his father and PW-2 Kasi is his wife. He knows the accused and he was resided in his house as tenant. On 18.11.2010 after having dinner, he slept in the house of his mother. At about 9 P.M, his father came to the house. When PW-19 came from his house to his mother's house since he was wearing Maalai for Lord Ayyappa and at that time the house was opened and no light. The PW-19 further stated that his mother might have watched TV and slept and therefore he switched off the TV and went to sleep in Pooja room. Thereafter the PW-19's father came to the house after closed the shop and he came to know about the occurrence only after the sound raised by his father. When PW-19 saw, his mother was dead and after they raised the alarm, the neighbors came to their house. When PW-19 saw her mother, he noticed two Coir bag and Grinder stone with blood stain. The PW-19 also stated that the Thali Chain and Ear-stud were missing on the neck of his mother. The M.O-1 & 2 shown to him is that of his mother. He also further stated that he identified the M.O.1 & 2 in the police station on 15.12.2010 and he also saw the accused in the police station. Regarding the above said incident the Inspector of Police enquired him.

18. The PW-21 Ganesan deposed that while he was working as Village Administrative Officer in Seithur Village, on 15.12.2010 at 6.30 A.M when he was going nearby EB bus stop, the Inspector of Police, Thalaivaipuram called him and his assistant Murugesan. At that time, the accused came and gave confession statement to the Inspector of Police wherein he stated that he



will show the place of occurrence and he will produce the Jewels kept at Ilathur. The PW-21 and his assistant put their signature in the confession statement and the admitted portion of the confession statement is Ex-P8. Thereafter PW-21 had gone along with the police and the accused to the Mother-in-law house of the accused at Ilathur where the Inspector recovered M.O.1, M.O.9, M.O.14, and M.O.15 and in which PW-21 put his signature. Thereafter the accused identified his Mother-in-law and M.O.2 was recovered from PW-13 pledge shop which was identified by the Mother-in-law of the accused. For recovery of M.O.2, the Inspector of Police prepared Mahazar Ex-P3 wherein the accused and the owner of the Pledge shop Muthusamy put their signatures.

19.The PW-27 Elangovan, the Inspector of Police deposed that on 18.11.2010, he took up the case in Crime No.453/2010 for investigation and went to the occurrence place at 11 P.M where he prepared Mahazar and rough sketch Exs-P4 & P14 respectively. He conducted inquest enquiry in the presence of witnesses Ramar, Mariyappan, Marimuthu and prepared inquest report Ex-P15. He sent the dead body for post mortem to Government Hospital, Rajapalayam. The PW-27 handed over the investigation to the PW-28, the Inspector of Police, Thalaivaipuram on 23.11.2010.

20.The PW-28 V.Kumaravel, Inspector of Police deposed that he took up the investigation of Crime No.453/2010 on 23.11.2010 and enquired the witnesses and visited the place of occurrence. On receiving the secret information, on 15.12.2010 he along with his party at about 6 A.M in the morning went to EB office road at Seithur and watched the area and at that time the accused Murugan @ Thirumalai Murugan on seeing the police party tried to escape, he was arrested by PW-28. At that time, PW-21 VAO Ganesan and his assistant Murugesan came there and the accused gave confession statement and the same was recorded in the presence of the above said persons and obtained their signatures in the confession statement. The admitted portion of the confession statement is Ex-P8. The PW-28 further deposed that after arrest, the accused informed him that he murdered Annalakshmi and robbed the jewels from her neck and he kept M.O.2 Ear-stud and other material objects in the house of his Mother-in-law at Ilathur. Therefore PW-28 along with VAO Ganesan and his assistant Murugesan went to the Mother-in-law's house at Ilathur where they recovered M.O.1 Thali Chain, M.O.14 Pant, M.O.15 Shirt and M.O.9 Cloth Bag. Further the ½ Sovereign of Flower Model Ear-stud given to the Mother-in-law of the accused was pledged by her under Ex-P2 receipt and M.O.2 was recovered from Pledge Shop and for that Ex-P3 Mahazar was prepared. Thereafter PW-28 went to Thalaivaipuram Police Station and



enquired PW-1, his son and daughter-in-law and they identified M.Os.1 & 2. The PW-28 also recorded the statement of PW-1, his son and daughter-in-law. Thereafter the accused and the material objects were sent to the concerned Judicial Magistrate Court. Then PW-28 went to Tiruppur and enquired Raju, Kannan and Shenbagavalli and recorded their statement. After completion of enquiry, he filed charge sheet against the accused under Section 450, 392 and 302 of IPC and filed Ex-P17 alteration report of the offences.

21. On the evidence taken by the trial court namely The Learned Principal District & Sessions Judge, Virudhunagar District at Srivilliputtur came to the conclusion that the charges laid against the accused were proved by the circumstantial evidence led by the prosecution.

22. In the above said circumstances, though there is no direct eye witness, the learned Trial Judge convicted the accused for the offences under section 450, 392 and 302 of I.P.C. Against the said conviction the present appeal has been filed.

23. We have heard Mr.N.Ananthapadmanaban, learned counsel for the appellant and Mr.C.Ramesh, learned Assistant Public Prosecutor and we have also perused the records carefully.

24. In this case, on going through the entire evidences, documents and material objects, now we have to consider whether the judgment of conviction passed by the trial court can be sustained in law. As noticed above, the conviction is based on circumstantial evidence as no one has seen the accused committing murder of the deceased. While dealing with the said conviction based on circumstantial evidence, the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. the guilt of the accused, which would mean that the onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the Court. It is the case of murder for gain. The PW-1 Ramasamy who is the husband of the deceased Annalakshmi. From his evidence, it is revealed that on 18.11.2010 he had seen his wife with pool of blood and the jewels wore by his wife were found missing. It is the uniform case of PW-1, PW-2 and PW-19 that the deceased Annalakshmi had gone for reception on the date of occurrence i.e., on 18.11.2010 by wearing jewels on her neck and the same



were found missing after her death. Further all the above 3 witnesses categorically deposed that Thali Chain and one pair of Ear-stud of the deceased Annalakshmi were found missing and therefore the murder was taken place only for robbery of the gold jewels of Annalakshmi.

25. We could easily come to the conclusion from the evidences of PW's-8 & 9 that on the date of occurrence i.e., on 18.11.2010 all the above said two witnesses had seen the accused at about 7 to 7.45 P.M nearby the place of occurrence. The PW-8 who was working as Supplier at hotel stated in his evidence that 4 years back at 7.30 P.M while he was doing his supply work, the accused came to the hotel, asked him to serve Parotta and he served Parotta to the accused. After eating Parotta, he paid money for the same and went away. Thereafter he came to know that the accused murdered a Lady. The PW-9 Shakthivel stated in his evidence that he was having a Bunk shop at Vanamoorthy Lingam Street. On 18.11.2010, at about 7.45 P.M while he was in his shop, a male person aged about 35 years watched Vanamoorthy Lingam Street. When PW-9 questioned him, he replied that he is an outsider and he came to his relative house and his name is Murugan. He purchased Roja Pakku and left towards Vanamoorthy Lingam Street. Therefore the Learned Trial Judge is right in coming to the conclusion that the accused has committed the crime on 18.11.2010 from the evidences of PWs-8 & 9. Further, in this case, the chain of link between the accused and the offence is established beyond reasonable doubt by the prosecution

26. Now let us examine the evidences of PWs-5 & 6. The PW-5 was the Manager of Somu Sizing Mill at Somanur. According to him, the accused and his family members came to the Mill and requested for employment. The accused also received an advance amount of Rs.35,000/-. Thereafter, the accused and his family members worked there for 2 or 3 months, but subsequently left from the Mill without paying the advance amount. The PW-6 was also working as Manager in Chithirai Jothi Sizing Mill at Somanur. He also deposed that the accused came to their Mill and requested for job and received Rs.35,000/- towards advance and Rs.1,000/- towards transport expenses. As usual the accused neither come to work nor repaid the advance amount. When PW-6 contacted the mobile number given to him, it was attended by the uncle of accused namely Chellaiah and he promised to bring the accused. But the said Chellaiah brought the mother and sister of the accused and they worked for one week and thereafter left from the Mill. The PW-15 Chellaiah also corroborated the evidence of PW-6. Further the PW-11 who is the wife of the accused admitted the receipt of advance amount from two



different Mills and also admitted the non-payment of the advance amount. From the above, it is quite clear that the accused was in need of money. That apart the accused was arrested and his confession Ex-P8 was recorded by PW-28 in the presence of PW-21, the Village Administrative Officer and his Assistant. On the confession of the accused, the PW-28 Inspector of Police recovered M.O.1 & 2.

27. Therefore the prosecution has proved the fact that the commission of offence committed only by the accused by examining PWs-1, 2, 5, 6, 8, 9, 11, 15, 19, 21 & 28. The evidences of P.Ws-1, 2, 5, 6, 8, 9, 11, 15, 19, 21 & 28 are corroborated to each other. The contention of the Learned Counsel for the accused/appellant that PW-21 V.A.O deposed that Ex-P8 confession statement was prepared only at police station. The said argument can't be accepted for the reason that the PW-21 in his cross has clearly stated that all the statements and documents were prepared only at the place of arrest of the accused and thereafter only PW-21 went to police station. The further contention of the Learned Counsel for the appellant that Ex-P1 does not speak about M.O.2 and therefore the recovery itself is wrong and therefore the accused should be given benefit of doubt and he should be acquitted. We have closely perused Ex-P1 complaint wherein it has been clearly mentioned that ½ sovereign ear-stud in both ears of the deceased were stolen. Hence the contention of the Learned Counsel for the appellant is not at all correct and the accused can't be acquitted on that ground also.

28. In this case, the prosecution has established each circumstance by independent evidence without giving room to any other hypothesis and it is consistent with the guilt of accused. At this juncture, it is useful to refer the Judgment reported in (2013) 10 SCC 421, on the very purpose of imposition of a punishment. They are thus:

"... the punishment is the way in which society expresses its denunciation of wrongdoing; and, in order to maintain respect for the law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishments as being a deterrent or reformative or preventive and nothing else.... The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrongdoer deserves it, irrespective of whether it is a deterrent or not."



29. In the present case, as discussed earlier, the chain of link between the crime and the accused has been clearly established by the prosecution and the prosecution has clearly proved the case beyond reasonable doubt and therefore we hold that the charges against the accused are proved and the conviction and sentence imposed by the Learned Judge not warranted interference and in the result the appeal is dismissed.

30. The learned Judge has convicted the accused after carefully considering the oral evidences, documents and material objects by holding the accused guilty.

31. In this case the conviction is based on circumstantial evidence and the same has been proved by the prosecution beyond reasonable doubt.

32. In the result, the criminal appeal is dismissed and conviction and sentence imposed on the appellant by the Trial Court are hereby confirmed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Rajapalayam, Virudhunagar District.
2. The Chief Judicial Magistrate,
Srivilliputtur.
3. The Principal Sessions Judge,
Virudhunagar.
4. The Director General of Police,
Mylapore, Chennai.
5. The District Collector,
Madurai.
6. The Inspector of Police,
Thalavaipuram Police Station.
7. The Superintendent of Central Prison,
Madurai.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal (MD) No. 21 of 2016
22.11.2016