

In the High Court of Judicature at Madras

Reserved on:3.4.2017

Delivered on:27.04.2017

Coram:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Crl.A.No.590 of 2016

Subash Appellant (Accused)

vs.

State, rep.through SHO,
Inspector of Police,
Arakandanallur Police Station. Respondent (Complainant)
(CR No.509/2012)

Appeal preferred under Section 374 Cr.P.C., against the judgement dated 18.3.2016 passed in S.C.No.530 of 2013, on the file of the Sessions Judge, Magalir Neethimandrum Fast Track (Mahila Court), Villupuram.

For Appellant : Mr.S.Duraipandian
For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

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

The appellant is the sole accused in S.C.No.530 of 2013, on the file of the learned Sessions Judge, Mahalir Needhimandram Fast Track (Mahila Court), Villupuram. He stood charged for offence under Sections 302 and 404 IPC. By judgement dated 18.3.2016, the trial Court Convicted him under both charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for one year, for the offence under Section 302 IPC and to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for two months for the offence under Section 404 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

(a) The deceased in this case was one Mrs.Unnamalai. She was a retired teacher. P.W.1 is one of the sons of the deceased. Her husband, who was also a teacher died sometime before the alleged occurrence. P.W.1 and his family members were residing at T.Thevanur Village. Yet another son of the deceased was residing in Hosur with his family members. Thus, at her house at Veerapandi, the deceased alone was residing. During holidays, the deceased used to visit the house of P.W.1 at T.Thevanur. Similarly, on 4.8.2012, the deceased came to the house of P.W.1, stayed with him and in the evening of 5.8.2012, she returned to her village.

(b) It is further alleged that P.W.5-Mrs.Mallika is a neighbour of the deceased. According to her, on 6.8.2012, around 6.00 p.m., she found that there were no lights 'on' in the house of the deceased. Therefore, P.W.5 went to the house of the deceased and knocked at the doors. But the doors were bolted from inside. Therefore, P.W.5 informed P.W.1 about the same. P.W.1, in turn informed his cousin (P.W.9), who is residing near the house of the deceased, to go to the house of the deceased. Accordingly, P.W.9 went to the house of the deceased. P.W.5 was also present. Since the main door of the house was bolted from inside, they went to the backyard of the house and by force opened the backside door of the house and went into the house. Inside the house, to their shock, they found the deceased lying dead. There were injuries on her body. The gold chain which the deceased used to wear was not found on dead body.

(c) In the meanwhile, P.W.1, along with his wife, rushed to the occurrence village. By the time, others have entered into the house. P.W.1 also noticed that the deceased was no more and there were injuries on her body. He further noticed that a gold chain, weighing five sovereigns, was found missing from the neck of the deceased. Then, P.W.1 went to the Aragandanallur Police Station and made a complaint at 9.00 p.m., on 6.8.2012. The Sub-Inspector of Police, Shanmugham, registered a case on the said complaint. Ex.P1 is the complaint and Ex.P31 is the First Information Report.

(d) The case was taken up for investigation by the then Inspector of Police (P.W.39). He went to the place of occurrence at 11.30 p.m. At his request, a sniffer dog was also

brought to the place of occurrence and an expert in finger prints was also brought. P.W.39, examined many witnesses and conducted inquest on the body of the deceased and forwarded the body for post-mortem. P.W.36-Dr.Geethanjali, conducted autopsy on the body of the deceased on 7.8.2012 at 2.00 p.m. She found the following injuries:

"External examination: Face swollen. Eyes bulging and closed. Tongue seen protruding between the teeth to a length of 1 cm. blister seen over upper part of chest (R) and (L) upper limbs. All finger nails cyanosed. Injuries: (1) contusion seen over @ 1.5 cm x 1.5 x 0.5 cm seen just below the medial 1/3rd of (R) mandible - in the neck (R) side (4) 1 cm x 0.5 x 0.7 cm below the chin (4) 2m x 0.5m x 0.5m - medial side of (L) big toe (2) contusion abrasion 2 m x 0.5 m x 0.5 m over the (R) lower eye lid (3) Laceration of size 1 m x 1m x 0.5 m - dorsum of (R) thumb (4) Crush injury of the tip of (R) 2nd toe with loss of tissue of size 0.2 m x 2 m x 1.5 m. II On opening of the Head: Scalp bones of the cr.....and membrane intact. Brain : Normal in size. Cut section. Congested. Base: Intact. III On opening of the Thorax: Rib cage intact. Heart: Normal in size cut section: Multiple atheromatus ...in the intima of rest of Aorta. Con....."

Ex.P.22 is the post-mortem certificate and Ex.P.23 is her final opinion regarding the cause of death. According to her, the deceased had died due to manual strangulation by neck.

(e) P.W.39 recovered the blood stained earth and sample earth from the place of occurrence, as soon as he prepared an observation mahazar and a rough sketch, at the place of occurrence. He recovered the blood stained clothe from the body of the deceased after post-mortem was over.

(f) The investigation was in progress. On 16.8.2012, the accused went to the office of P.W.32, the Village Administrative Officer, at 7.00 a.m. The accused wanted to surrender before him. According to the further case, as it was orally confessed by the accused, P.W.32 reduced the same into writing and then, he took the accused along with the confession statement and produced him before P.W.39. (P.W.32 has turned hostile and he has not supported the case of the prosecution in any manner). P.W.33-Village Assistant, who was with P.W.32, has also turned

hostile. Based on the extra judicial confession of the accused, P.W.39 altered the case into one under Sections 302 and 379 IPC at 9.15 a.m., on 16.8.2012. At 9.45 a.m., he arrested the accused in the presence of the same witnesses. While in custody, the accused gave a voluntary confession, in which he disclosed that he had pledged a gold chain at the shop of P.W.22. In pursuance of the said disclosure statement, he took the police and the witnesses to the shop of P.W.22 and identified him. From P.W.22, P.W.39 recovered a gold chain weighing 38.400 gms. A duplicate receipt of the same was also recovered by P.W.39 from P.W.22. The chain was subsequently identified as the one belonging to the deceased, which had been stolen away. Then, from the accused, a cement coloured pant, half sleeve shirt (M.Os.12 and 13) were recovered, in pursuance of the confession of the accused. On returning to the Police Station, P.W.39 forwarded the accused for judicial remand and handed over the material objects also to the Court.

(g) P.W.39, examined many more witnesses. At his request, he forwarded the material objects to the Court with a request to forward the same for chemical examination. From one Mr.Murugan, he recovered a sum of Rs.8,000/-, on being identified by the accused. The statements of some of the witnesses were recorded under Section 164 Cr.P.C. So far as the sniffer dog is concerned, it did not yield any clue. The finger prints also could not be lifted from the place of occurrence. On completing the investigation, P.W.39, laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges under Sections 302 and 404 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 39 witnesses were examined, 49 documents and 15 material objects were marked.

4. Out of the said witnesses, P.W.1, the son of the deceased, has spoken about the fact that the deceased came to his house on 4.8.2012 and left for her house at Veerapondi on 5.8.2012, in the evening. He has further stated that at 6.30 p.m. on 6.8.2012, he was informed by P.W.5 that there was no response from the house of the deceased, as lights were not on. He has further stated that before he reached the house of the deceased with his wife, he informed his cousin (P.W.9) to go to the house of the deceased. He has further stated that P.W.9 and others have opened the back door of the house and found the deceased dead. He has also spoken about the complaint made by him thereafter.

5. When P.W.1 was examined before the trial Court, he categorically stated that a gold chain owned by the deceased was

found missing and later on it was recovered. But unfortunately he was not called upon to identify the gold chain recovered by the police in connection with this case. A petition was filed by the State, seeking to recall P.W.1 to let in additional evidence as per Section 391 Cr.P.C. After due notice to the accused and after hearing the learned counsel, the said petition was allowed and then P.W.1 was recalled. P.W.1 was thus further examined before this Court, during which, he identified M.O.1 as the gold chain, which was lastly worn by the deceased and that was found missing from her dead body. P.Ws.3 to 4 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.5.-Mrs.Malliga has stated that around 6.00 p.m., she found that there was no lights in the house of the deceased. Therefore, she went there and knocked at the main door of the house. The main door of the house of the deceased was found bolted from inside. Then, she informed P.W.1 about the same over phone. P.W.1 in turn informed P.W.9. P.Ws.9 and 5 opened the back door of the house and found the deceased died with injuries. Gold chain worn by the deceased was also found missing. P.W.5 has further stated that thereafter P.W.1 came with his wife to the place of occurrence. P.W.6 has spoken about the preparation of observation mahazar and a rough sketch. P.W.7 yet another son of the deceased, who was residing at Hosur, has stated that he came to the place of occurrence on hearing about the occurrence. P.W.8, the wife of P.W.1, has stated that she came along with P.W.1 to the place of occurrence, after information was received from P.W.5. She has also stated about the missing of the gold chain from the neck of the deceased. P.W.9, the cousin of P.W.1, has stated that around 6.30 p.m., P.W.1 requested him over phone to go and see the house of the deceased. Accordingly, he went and found the main door of the house of the deceased locked from inside. Then, P.W.5 and P.W.9 went to the backyard of the house and broke opened the door. When they went inside the house, the deceased was lying with injuries. The chain worn by her was also found missing. P.W.8, yet another neighbour, has also spoken about the same facts. P.W.11 is the wife of P.W.7. She has stated that she came to the house of the deceased on hearing about the information.

6.P.W.12 is an important witness for the prosecution. According to him, he was a milk vendor. He used to supply milk to the deceased every day. According to him, the deceased used to come to his shop and purchase milk. On 6.8.2012, around 6.00 a.m., she came to his shop, purchased milk and went away. The next day, he came to know that the deceased was no more. Thus, according to him, the deceased was lastly seen alive at 6.00 a.m. on 6.8.2012. P.W.13 has also stated that he found the deceased returning to her house after purchasing milk from P.W.12. Thus, he had also seen the deceased alive around 6.00 a.m. on 6.8.2012.

7.P.W.14 is yet another witness for the prosecution. He is a neighbour of the deceased. According to him, when he was standing just in front of the house of the deceased to go to the Government Hospital at Veerapondi around 6.00 a.m., the deceased was returning to her house, after purchasing milk from P.W.12. He has further stated that soon after, she came out of her house and called the accused. Then, the accused also went into the house of the deceased. He has further stated that thereafter around 7.00 p.m., on the same day, he came to know that the deceased was no more. P.W.15 has not stated anything incriminating. He has only stated that he was working in a local college. He has further stated that he did not know the accused at all. Though he was expected to speak about the fact that he gave Rs.50,000/- to the accused, he did not say so. Still strangely he was not treated as hostile. P.W.16 has stated that on 6.8.2012, the accused gave Rs.50,000/- to him with a request to pay Rs.1,500/- to one Mr.Murugan and Rs.31,000/- to Mr.Elumalai. P.W.17 has stated that some time before 6.8.2012, the accused had borrowed a sum of Rs.37,000/-. On 6.8.2012, around 4.30 p.m., P.W.17 went to the house of P.W.16 on being called by him. At the house of P.W.16, according to P.W.17, P.W.16 gave Rs.31,000/- to him, informing that the accused wanted to pay the same to him. P.W.18 has stated that the accused used to have food in the small hotel run by him at Veerapondi. A sum of Rs.1,500/- was due from the accused. According to P.W.18 on 6.8.2012, in the afternoon, the accused told him over phone to go and receive Rs.1,500/- from P.W.16. P.W.19 has stated that on 6.8.2012, the accused gave him Rs.8,900/-. P.W.20 has stated that the accused paid Rs.3000/- to him.

8.P.W.21 is yet another important witness for the prosecution. According to him, he was a worker in Ramesh Jewellery at Thirukovilur, during the relevant time. On 6.8.2012, when he was proceeding to his work shop at 10.15 a.m., the accused intercepted him. At that time, the accused told him that he was acting in a cinema. Then, he took out a gold chain from his pocket, gave the same to him with a request to sell the same. But P.W.21 told him not to sell, instead to pledge the same. Accordingly, he took the accused to Ramesh Jewellery and made arrangement for the accused to pledge the same for Rs.50,000/-. He has further stated that later on the police recovered the said chain from the shop. P.W.22 is the owner of the jewellery shop. He has also spoken about the pledging of the gold chain for Rs.50,000/- by the accused. He has further stated that a receipt was issued by him to the accused. But during investigation, according to him, the police obtained a

duplicate receipt from him (vide Ex.P8). P.W.23, an employee in Ramesh Jewellery shop, has also spoken about the pledging of the jewel by the accused for a sum of Rs.50,000/-. He has further stated that Ex.P8- the receipt, was prepared only by him. P.W.24 has stated that the accused paid Rs.500/- to him.

9.P.W.25 has spoken about the occurrence. He has stated that on 6.8.2012, around 7.30 a.m., when he was passing through the house of the deceased, the accused was found entering into the house of the deceased by scaling down a small wall. On the same day evening he came to know that the deceased was no more. P.W.26, yet another neighbour, has stated that on 6.8.2012, around 7.30 a.m., the accused was found jumping into the backyard of his house from the house of the deceased. When P.W.26 enquired, the accused replied that he came to the backyard of the house of P.W.26 to pluck 'Kuppaimeni leaves' for medicinal purpose. P.W.28 is a neighbour of the deceased. On the day of occurrence, according to him, around 6.30 to 7.00 a.m., the accused was called by the deceased and the deceased wanted him to verify whether the electric fuse in the house had snapped. Thus, according to this witness, the accused was found in the house of the deceased at or about the time of occurrence. P.W.29, yet another neighbour, has also stated that there was no light in the house of the deceased in the evening of 6.8.2012. He has spoken about the arrival of P.W.9 and others. P.W.30, yet another neighbour, has also spoken about the same facts as spoken by P.W.29.

10.P.W.31, yet another neighbour, has not stated anything incriminating. He has stated that he had gone to Chennai during the relevant time. P.W.32-the Village Administrative Officer, who was expected to speak about the extra judicial confession made to him by the accused on 16.8.2012 at 7.00 a.m., has turned hostile and he has not supported the case of the prosecution in any manner. P.W.33 is a Village Assistant. He has also turned hostile. P.W.33 has stated that the extra judicial confession was dictated only by the police.

11.P.W.34-an expert from the Forensic Science and Laboratory, has stated that he examined the material objects and found human blood stains. So far as the internal organs of the deceased, he found that there was neither poison nor alcohol. P.W.35 has spoken about the photographs taken at the place of occurrence, as directed by P.W.39. P.W.36 has spoken about the post-mortem conducted and her final opinion regarding the cause of death. P.W.37, a Constable, has stated that he took the dead body from the place of occurrence after the inquest was over and handed over the same to P.W.36 for post-mortem. P.W.38 a Judicial Magistrate has stated that he recorded the statement of some of the witnesses under Section 164 Cr.P.C. P.W.39, has

spoken about the registration of the case, investigation done and the final report filed.

12. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness nor mark any document on his side. His defence was a total denial. Having considered all the above, the trial Court convicted him under both the charges. Thus, he is before this Court with this appeal.

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

14. This is a case based on circumstantial evidence. In the case of this nature, the prosecution is expected to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any missing link, so as to unerringly point to the guilt of the accused and there shall be no other hypothesis which would be inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us now analyse the circumstances projected by the prosecution.

15. According to P.W.1, P.W.7, P.W.8 and P.W.11, the deceased was living alone at her house at Veerapondi. Her husband was no more. From the evidence of P.W.1 and P.W.8, it has been established that the deceased came to the house of P.W.1 at T.Thevanur on 4.8.2012, stayed with them for one day and left for Veerapondi in the evening on 5.8.2012. We find no reason to reject this part of the case of the prosecution.

16. On 6.8.2012, around 6.00 a.m., P.W.12, Mr. Anandan, had seen the deceased alive. According to him, the deceased came to his shop around 6.00 a.m. on 6.8.2012, purchased milk and went back to her house. P.W.13, yet another neighbour, has stated that he saw the deceased returning from the shop of P.W.12 after purchasing milk. He further found the deceased entering into her house around 6.00 a.m. P.W.14 has stated that he found the deceased returning to her house after purchasing milk from the shop of P.W.12 around 6.00 a.m. Thus, from these witnesses, the prosecution has clearly established that the deceased was seen alive at 6.00 a.m. on 6.8.2012 at her house.

17. P.W.14 has further stated that after entering into her house at 6.00 a.m. she returned and called the accused into her house. Then the accused went into her house. Thus, P.W.14 had lastly seen the accused entering into the house of the deceased around 7.00 a.m., on 6.8.2012. We find no reason to reject the evidence of this witness. Though he had been subjected to

lengthy cross-examination, nothing has been elicited to create any doubt in his evidence. P.W.28, yet another neighbour, has stated that around 6.30 to 7.00 a.m., he found the deceased alive at her house. She called the accused and wanted him to verify whether the electric fuse in the house has snapped. The accused accordingly entered into the house of the deceased. The learned counsel for the appellant would submit that this witness cannot be believed. We have anxiously gone through the entire evidence of this witness. But we find nothing to create any doubt in his veracity. From the evidences of these two witnesses, viz., P.Ws.14 and 28, the prosecution has clearly established that at or about the time of the occurrence, the accused was found entering into the house of the deceased, at the request of the deceased.

18.The next circumstance is as to when did the accused had left the house of the deceased. This has been spoken by P.Ws.25 and 26. P.W.25 has stated that around 7.30 a.m. on 6.8.2012, he was on the open terrace of his house, with his wife, drying clothes. At that time, he found the accused scaling down a small wall and entering into the house of the deceased, through the backyard. When P.W.25 asked him as to why he was so doing, he told him that he was checking whether there was any snap in the electricity connection. This, according to the accused, he was doing at the request of the deceased. P.W.26 has stated that on or about the same time, the accused scaled down a wall and jumped into the backyard of his house. When P.W.26 enquired him, the accused told him that he had come there to collect 'kuppaimeni leaves' for medicinal purpose. Thereafter, the accused was not seen. From the evidences of these two witnesses, the prosecution has clearly established that some time between 6.30 to 7.30 a.m., on 6.8.2012, the accused was at the house of the deceased. We find no reason to reject this part of the case of the prosecution. The evidence of this witnesses, in our considered view, fully inspire the confidence of this Court and we find no material at all on record, to doubt their credibility.

19.Next circumstance is that the deceased was found alive inside the house around 6.00 p.m. on 6.8.2012. According to P.W.5, since she found that there was no light at the house of the deceased, she went to the house of the deceased and knocked at the main door of the house. The door was found bolted from inside. Since there was no response from inside, she informed P.W.1 about the same. P.W.1 in turn spoke to his cousin-P.W.9. P.W.9 thus went to the house of the deceased. P.W.5 and P.W.9 found the main door locked from inside and therefore they went to the backyard of the house; opened the door; went into the house and found the dead body of the deceased. The Doctor, who conducted autopsy on the body of the deceased, has opined that

the death of the deceased was due to manual strangulation by neck. The Doctor has given detailed reasons as to why she has come to the said conclusion. We find no reason to reject the said opinion of the Doctor. From these witnesses, the prosecution, in our considered view, has clearly established that the deceased, who was lastly seen alive around 6.00 to 6.30 a.m. on 6.8.2012, was found dead at 6.00 p.m. on the same day. The death was a homicide. Thus, the deceased had been done to death some time between 6.00 a.m., and 6.30 p.m. on 6.8.2012.

20. According to the family members of the deceased, more particularly, P.Ws.1, 7, 8 and 11, the deceased used to wear a gold chain, weighing five sovereigns hardly. M.O.1 was the said gold chain, which she was wearing. As requested by P.W.1, when P.W.5 and P.W.9 visited the house of the deceased, the deceased was lying dead with injuries and the said gold chain was found missing from the neck of the deceased. Thus, according to the prosecution case, the gold chain was removed in the same occurrence, in which the deceased was killed. But the learned counsel for the appellant would submit that in Ex.P1, the complaint, there is no mention about the missing of the gold chain (M.O.1). Thus, according to the learned counsel, it is an improvement made by the prosecution as though there was missing of M.O.1. Though this argument appears to be attractive, a deep analysis of the facts available on record would go to prove the awryness of the same. It is needless to point out that the FIR need not be an encyclopaedia containing all the necessary details. In the instant case, it is true that in Ex.P1, P.W.1 had omitted to mention about the missing of the gold chain. But in a situation where his mother, who was seen alive the previous day, was found dead in suspicious circumstance, P.W.1 would not have properly verified at that time as to whether the deceased was wearing all the jewels. Therefore, he had quite naturally omitted to mention about the missing of M.O.1 from the neck of the deceased. Later, during investigation, he had mentioned about the same to the police. Therefore, in our considered view, though in Ex.P1, P.W.1 had failed to mention about the missing of M.O.1, on this score, we cannot come to the conclusion that M.O.1 was not in fact found missing from the body of the deceased. We accept the explanation offered by the prosecution for the non-mentioning of the gold chain in Ex.P1. Thus, we hold that the prosecution has clearly established that in one and the same occurrence, in which the deceased was killed, M.O.1-gold chain was removed from her body.

21. During the course of investigation, the sniffer dog was brought to the place of occurrence, which proved futile. The finger print expert also could not lift any chance finger prints from the house of the deceased. However, it is the case of the prosecution that the accused, on his own, appeared before the

local Village Administrative Officer on 16.8.2012 at 7.00 a.m. and gave an extra judicial confession. The said confession was allegedly reduced into writing by P.W.32. P.W.33, the Assistant of P.W.32, was very much present at the time of the confession, it is stated. But P.Ws.32 and 33 have completely turned hostile and they have not supported the case of the prosecution in any manner. In fact, P.W.32 has gone to the extent of saying that the extra judicial confession was drafted by him as dictated by the police. Therefore, he was treated as hostile and cross-examined at length. Thus, in our considered view, the prosecution has failed to prove that the accused made an extra judicial confession to P.W.32 on 16.8.2012 at 7.00 a.m.,

22.P.W.32 has further stated that he did not produce the accused to the police. But P.W.39 has stated that the accused was produced only by P.W.32. Though P.W.32 has turned hostile for his own reasons, on that score, we cannot reject the evidence of P.W.39, who has stated that the accused was produced before him only by P.W.32. P.W.39 has further stated that he arrested the accused in the presence of P.W.32 and 33. While in custody, according to P.W.39, the accused made a voluntary confession in which he disclosed the shop where he had pledged M.O.1-gold chain. In pursuance of the said disclosure statement, he took the police and the witnesses to the said shop and from there M.O.1 was recovered.

23.The learned counsel for the appellant would submit that since P.Ws.32 and 33 have turned hostile, the evidence of P.W.39 that the accused made a disclosure statement, out of which, the jewel was recovered, cannot be believed. We find no force at all in the said argument, because, there is overwhelming evidence to prove that M.O.1 was pledged only by the accused. In this regard, we may refer to the evidences of P.Ws.21 to 23. P.W.21 has stated that he was working as an employee in Ramesh Jewellery at Thirukovilur. On 6.8.2012, around 10.15 a.m. when he was proceeding to the shop, the accused intercepted him. The accused was previously known to him. The accused told him that he had started acting in cinema. Then, the accused took out the gold chain from his pocket and gave the same to him and wanted him to sell the same. P.W.22 told him that instead of selling, it could be pledged. The accused wanted Rs.50,000/-. He took the accused to the said shop and made arrangement for the accused to pledge the same for Rs.50,000/-. M.O.8 is the receipt for the same. The original receipt was given to the accused. P.W.22 is the owner of the shop. He has also spoken about the same facts. P.W.23, yet another employee of the jewellery shop, has stated about the same facts. He has further stated that he only prepared Ex.P8-the receipt. From these evidences, the prosecution has attempted to prove that the accused was found in possession of

the stolen gold chain, on 6.8.2012, around 10.15 a.m and pledged the same at Ramesh Jewellery.

24.The learned counsel for the appellant would submit that there are lot of contradictions and improbabilities in the evidences of these witnesses and therefore, they should not be believed. The learned counsel would submit that had it been true that the gold chain was really pledged by the accused at the shop of P.W.22, nothing would have prevented the police from recovering the Register maintained in that shop. He would further submit that Ex.P8-the receipt is not the original. This receipt, even according to the case of the prosecution, was given by P.W.22 to the police. If really the jewel was pledged by the accused, the original receipt must be in the hands of the accused, the learned counsel contended. So saying, the learned counsel would submit that these three witnesses should be disbelieved. But we are not at all persuaded by the said argument. For the flaw committed by the police, in not recovering the Loan Register maintained by P.W.22, the evidences of P.Ws.21 to 23 cannot be rejected. P.Ws.21 to 23 are independent witnesses, who had no axe to grind against the accused. Though they were subjected to lengthy cross-examination, nothing had been elicited from them to dis-credit them. So far as Ex.P8-the receipt is concerned, according to P.W.23, it is in his handwriting. The original receipt was given to the accused, but the accused did not produce the same to the police. Therefore, the duplicate receipt, namely, Ex.P8 was received from P.W.22.

25.The learned counsel would further point out that in Ex.P8-the receipt, no seal of the shop was found. But this is not at all the case that in the receipts it was the practice of P.W.22 to affix the seal of the shop. The learned counsel has further pointed out that in the receipt it has not been mentioned that the gold chain was weighing five sovereigns. But it contains the weight of the gold chain. Therefore, in our considered view all the arguments advanced by the learned counsel for the appellant, doubting the evidences of P.Ws.21 to 23, are liable to be rejected. From these evidences we hold that the accused was found in possession of the stolen property, namely, M.O.1, soon after the commission of the crime.

26.Since we are inclined to give weightage to the evidences of P.Ws.21 to 23, from out of the same, the prosecution has proved beyond reasonable doubts that the accused was found in possession of the stolen property around 11.30 a.m. on 6.8.2012, the hostility of P.Ws.32 and 33 would not in any manner go to favour the accused. The fact that the jewel was pledged at the shop of P.W.22 came to the knowledge of P.W.39 only out of the

disclosure statement made by the accused to him. Therefore, though P.Ws.32 and 33 have turned hostile, we find no reason to reject the evidence of P.W.39 that it was only out of the disclosure statement made by the accused, the shop of P.W.22 was identified and M.O.1 was recovered from the shop.

27.For being in possession of M.O.1, soon after the commission of theft, on the day of occurrence itself, the accused has got no explanation to offer. This would give rise to a presumption as provided under Section 114 of the Indian Evidence Act that the accused was the one who committed the theft of M.O.1. Since we have already concluded that the removal of the gold chain and the causing of the death of the deceased had happened in one and the same occurrence, the natural presumption is that the person who committed the theft of the gold chain was the one who committed the murder of the deceased. Thus, we presume that it was this accused who committed the murder of the deceased and removed M.O.1-gold chain from the neck of the deceased. Of course, this presumption is rebuttable. But unfortunately, the accused has not brought on record any material either by way of direct evidence or by circumstantial evidence to reject the said presumption. Thus, from out of this unrebutted presumption, the fact that the accused was the one who committed the murder and removed M.O.1-gold chain from the dead body stands proved beyond any reasonable doubt.

28.The prosecution has examined P.Ws.16 to 20 to prove that the accused had spent the money, which he received by way of pledging, to settle his dues to P.Ws.16 to 20. But in our considered view, the evidences of P.Ws.16 to 20 are irrelevant because there is no evidence to prove that the money paid to these witnesses was the money obtained by the accused by the pledging of M.O.1. Therefore, these evidences deserve no weightage at all.

29.The learned counsel for the appellant would submit that P.Ws.1 and 25 have stated that the accused was taken to the police station on the next day of occurrence and therefore, the arrest of the accused on 16.8.2012 and the consequential recovery of M.O.1 cannot be true. We have carefully gone through the evidence of P.W.1. He had not at all stated that the accused was taken to the police station on the next day of the occurrence. He has only stated, that too, to a complex question asked to him as to whether it was correct to say that he took the witness and the accused to the police station on the next day of the occurrence, in the positive. Such complicated/complex questions are not lawful. The questions should have been simple. Therefore, the general answer given to such a complex question cannot be taken as an admission on the

part of P.W.1 that the accused was taken to the police station on the next day of occurrence. Similarly, P.W.25 has also stated that on the next day of occurrence, he was taken to the police station along with the accused. This answer has also been elicited by putting a complex question. He has stated that he was taken to the police station on the suspicion that he would have had a hand in the murder of the deceased. From these innocuous answers given by the witnesses, we cannot doubt the case of the prosecution that the accused was arrested only on 16.2.2012. Therefore, this argument is rejected.

30. In view of the foregoing discussions, in our considered view, the prosecution has clearly proved the charges against the accused beyond reasonable doubts and the trial Court has thus right in convicting the accused and sentencing him accordingly. We find no merit at all in this appeal.

31. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant, by the trial Court, are confirmed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Magalir Neethimandrum Fast Track,
(Mahila Court), Villupuram.
2. -Do- Thro The Principal Sessions Judge,
Villupuram.
3. The Judicial Magistrate,
Tirukoilur.
4. -Do- Thro The Chief Judicial Magistrate,
Villupuram.
5. The Inspector of Police,
Arakandanallur Police Station.

6. The Superintendent,
Central Prison, Cuddalore.

7. The Public Prosecutor,
High Court, Madras.

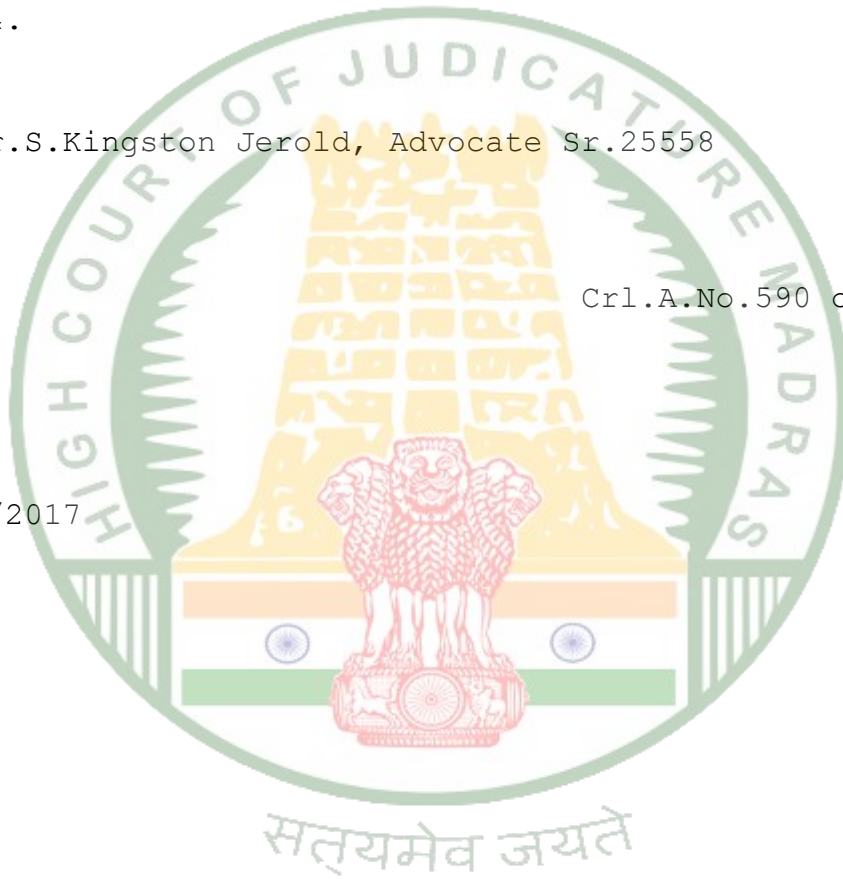
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The Section Officer,
Criminal Section,
High Court,
Madras-104.

+lcc to Mr.S.Kingston Jerold, Advocate Sr.25558

Crl.A.No.590 of 2016

sv[co]
srg 11/05/2017



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