

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
23.02.2018

DELIVERED ON
28.02.2018

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CRL.A.No.304/2017

1.M.Thangaraj
2.M.R.Rathinavel

Appellants /
P.Ws.1 and 6

Versus

1.The State rep by
The Inspector of Police
Bhavani Circle,
Aapakoodal Police Station
Erode District.

1st Respondent
/ Complainant

2.Sengottaian(A1)
3.Palanisamy (A2)

Respondents 2
and 3 / A1 and A2

Appeal filed under section 378 Cr.P.C., against the judgment of acquittal dated 14.02.2017 made in SC.No.41/2014 on the file of the learned Principal Sessions Judge, Erode.

For Appellants : Mr.N.Manokaran

For R1 : Mr.V.Arul, APP

For RR2&3 : Mr.T.Gowthaman

JUDGMENT

N.SATHISH KUMAR, J.

Originally, the accused were convicted for the offences u/s.449, 302 and 394 IPC and were sentenced as follows:-

Rank of the accused	Conviction under section	Sentence Awarded
A1 & A2	449 IPC	Each were sentenced to undergo imprisonment for life and a fine of Rs.10,000/- each, with a default sentence of 3 years rigorous imprisonment.
	394 IPC	Each were sentenced to undergo imprisonment for life and a fine of Rs.10,000/- each, with a default sentence of 3 years rigorous imprisonment.
	302 IPC	Each were sentenced to undergo imprisonment for life and a fine of Rs.25,000/- each, with a default sentence of 3 years rigorous imprisonment.

in SC.NO.41/2014 on the file of the learned Sessions Judge, Mahila Fast Track Court, Erode, under judgment dated 20.10.2014. The Trial Court ordered the sentences awarded u/s.449 and 302 IPC concurrently and the sentence awarded u/s.394 IPC to run consecutively. Against which, the accused preferred two separate appeals in CA.Nos.39 and 341 of 2015. While allowing the appeals, this Court under Judgment dated 05.08.2016, noted down that material witnesses were not examined and remanded SC.No.41/2014 to the file of the Trial Court and to transfer the same to the Court of Principal Sessions Judge, Erode, with a further direction to the learned Principal Sessions Judge to permit the prosecution to examine any witnesses afresh or to recall any witnesses already examined and to examine them further. The prosecution was also given liberty to let in any documentary evidence afresh to rectify the anomalies pointed out in the judgment. Similarly, accused were also given liberty to recall any witnesses already examined for the purpose of further cross-examination and to examine any defence witness. Further direction was also given to the effect that the Principal Sessions Judge shall dispose of the case in accordance with law by appreciating both, oral and documentary without getting influenced by any of the observations made in the said Judgment of this Court. After remand, three more witnesses were examined ; 1 more document was marked on the side of the prosecution and two documents were filed on the side of the defence. In nutshell, after remand, the prosecution examined P.Ws.1 to 29 ; marked Exs.P.1 to 52 besides marking M.Os.1 to 11. The defence exhibited Exs.D1 and D2. Based on the evidence and materials, the Trial Court, acquitted the accused on the ground that the circumstances relied upon by the prosecution, has not been established. Aggrieved over the said acquittal, the present appeal came to be filed by the complainant-P.W.1 [brother of the deceased] and P.W.6

[son of the deceased].

2 Be that as it may, the facts leading to the filing of this appeal, briefly narrated and are necessary for the disposal of this criminal appeal, are as follows:-

[a] The deceased Rajammal, aged about 68 years, mother of P.W.6, was residing alone in her farmhouse at Velamarathoor village at Erode District. She normally used to wear a gold chain and a pair of ear studs. P.W.1-Thangaraj, is the brother of the deceased. P.W.2-Periyasamy, was working under the deceased in the farmhouse as a coolie for about two years. As usual, on 16.02.2013, in the morning hours, P.W.2 went to the farmhouse of the deceased along with one Ramaakkal, Subramaniam and Rangammal, to find out as to what was the work to be done on that day in the farm. P.W.2 asked Ramaakkal to know about the work from the deceased. When the said Ramaakkal went inside the house, she found the deceased lying dead. Immediately, she informed P.W.2 who rushed to the house and found the deceased dead. The ear studs and gold chain used to be worn by her, were found missing. However, P.W.2 found a bike parked in front of the house of the deceased bearing Registration NO.TN-36-W-5268. Immediately, P.W.2 informed P.W.6-Rathinavel, over phone, since on that day, P.W.6 had gone to Chennai. P.W.6 informed the same to his maternal uncle-P.W.1 to go and see as to what had happened to his mother and make a complaint. Accordingly, P.W.1 rushed to the spot ; found his sister Rajammal lying dead. Immediately, he went to Aappakkoodal Police Station at 12.00 Noon, on 16.02.2013 and lodged a complaint under Ex.P.1 with P.W.23-the then Special Sub Inspector of Police.

[b] P.W.23-Balasubramanian, Special Sub Inspector of Police at the relevant time, on receipt of telephonic information from one Nandhakumar [P.W.3] that his aunt has been found lying dead and her ear studs and gold chain are missing, he went to the place of crime and on receipt of the written complaint from P.W.1, registered the crime in Cr.No.52/2013 for the offences u/s.302 and 380 IPC under Ex.P.36-FIR. He forwarded the originals of Exs.P.1 and 23 to the jurisdictional Court and copies to the higher officials.

[c] P.W.25-Mr.Mahalingam, Inspector of Police, Bhavani Circle, took up the case for investigation ; went to the place of occurrence and prepared the Observation Mahazar [Ex.P.2] and also drawn a Rough Sketch [Ex.P.38] in the presence of P.W.3 and one Rasu. He also recovered the material objects, viz., M.Os.1 to 4, under Mahazars, viz., Ex.P.3 and P.4, and also conducted inquest over the dead body of the deceased in the presence of Panchayatdars and villagers and prepared Ex.P.39-Inquest Report. He forwarded the dead body to the hospital for autopsy through a Constable along with a requisition.

[d] P.W.20-Dr.Jaganmohan, Assistant Civil Surgeon attached to the Government Hospital, Erode District, conducted autopsy on the dead body of the deceased on 17.02.2013 at about 8.00 a.m. after receipt of the requisition-Ex.P.18 from the Inspector of Police. He noted the following injuries:-

"External Injuries:-

Contusion [1] Left side of lower jaw.

[2] Chin [3] Contusion base of nose and between eyebrows. [4] Contusion 2cm diameter back of head. [5] Subcutaneous haematomas on forehead and both supra orbital region haematomas right temporal region both ear. [6] Abrasion left wrist and lower 1/3 of left forearm.

Internal:-

Skull:-Fracture right temporal region. Fracture base of skull on right, fracture roof of right orbit, multiple hemorrhage in brain.

Thorax:- Fractures 2,3,4 right ribs.

Abdomen, Thorax:- All organs are normal on gross and c/s.stomach empty, uterus empty. Hyoid Bone intact, organs and hyoid preserved for forensic analysis."

Ex.P.22 is the Postmortem Certificate and Ex.P.21 is the Final Opinion wherein he had opined, after receipt of the Viscera Report - Ex.P.19 and Hyoid Bone Report - Ex.P.20, that the deceased appeared to have died 32-36 hours prior to autopsy and due to shock from multiple injuries.

[e] P.W.25, the Investigating Officer, in continuation of his investigation, seized the dresses handed over by the Constable and sent the same to the Court under Form 91. He examined and recorded the statements of the witnesses. On 23.02.2013, on the basis of the photograph of A-2, he effected the arrest, near the place called Aththanikaikaati in the presence of P.W.11-Uthandi and one Mahalingam and recorded his voluntary confession statement and recovered a sum of Rs.16,150/- [M.O.9] under the cover of Mahazar-Ex.P.8. In pursuant to the disclosure statement, A-2 took police and the witnesses to the house of P.W.27-Rekha at Chennampattinam and thereafter, to the house of P.W.29-Harsha. P.W.8, P.W.11 and Mahalingam accompanied police all along. P.W.25 recovered gold chain - M.O.7 from the house of P.W.29-Harsha under Ex.P.14.

[f] P.W.8, in his evidence, has stated that A-2 [Palanisamy] is his wife's uncle's son. On 16.02.2013 at about 6.00 p.m. A-2 came to his house along with A-1 and stated that A-1 is doing coconut business and as there is shortage of funds, he gave M.O.7-gold chain to P.W.8 to pledge

the same and get the money and also told P.W.8 that he will return the money within four days. P.W.8, accordingly, took them to P.W.29, who owns a jewelry shop. Since the amount required by A-2 was a huge one, the person in-charge of the shop asked them to speak to the owner of shop, viz., P.W.29. Therefore, P.W.8 brought both accused to his house and informed about the happenings to his daughter, P.W.27-Rekha. Again, P.Ws.8 and 27 went to the shop. In the meanwhile, they also requested P.W.9 [Theerthakumar] - employer of P.W.8, to put a word to the owner of the jewelry shop. Thereafter, they pledged the chain for a sum of Rs.58,000/- and the accused stayed in the house of P.W.8 on the night hours on 16.02.2013 and left the house of P.W.8 on the next day afternoon. Thereafter, on 23.02.2013, the Investigating Officer brought A-1 [Sengottaiyan] and seized M.O.7.

[g] P.W.9-Theerthakumar, was a resident of Chennampattinam, Karnataka. P.W.8 was working under him. On 16.02.2013, at the request of P.W.8, he has recommended the case of the accused to P.W.29 to receive the gold chain [M.O.7] and to pay the amount. Accordingly, P.W.29 paid a sum of Rs.58,000/- after deducting Rs.2000/- towards interest. On 23.02.2013, police brought A1-Sengottaiyan and seized M.O.7-chain.

[h] P.W.24-Subramanian, Inspector of Police, Anthiyur Circle, in his evidence has stated that on 23.02.2013 at 2.30 p.m., while he was on special duty, effected arrest of A2 on 23.02.2013 at about 2.30 p.m. on suspicion. Since A-2 was under intoxication, he took A-2 to the hospital and thereafter, brought him to the police station and examined him in the presence of P.W.12-Govindaraj and one Baluchamy and arrested him. On such arrest, A-2 gave a voluntary statement and seized Rs.4200/- [M.O.11] in pursuant of the said confession. A-2 lead the police party, viz., P.W.24 and the other witnesses to Mettur Village to the house of one Sridhar-P.W.28 and recovered the Pawn Receipt issued by Muthoot Finance. Then at 11.00 p.m. on 23.02.2013, he took A-2 to Aappakkoodal Police Station and produced him before P.W.25 along with his Special Report - Ex.P.37. P.W.25 seized cash of Rs.4200/- and the Pawn Receipt from P.W.24. Thereafter, P.W.25 seized the ear studs [M.O.6] from P.W.16. P.W.25 also examined the other witnesses and recorded their statements.

[i] P.W.16-Malliga is the relative of A-2 [Palanisamy]. She had stated in her evidence that during the month of February 2013, the accused came to her house and handed over M.O.-ear studs and requested some money. P.W.16 borrowed Rs.4000/- from her neighbour and gave the same to A-2. Three days later, A2 came back ; gave Rs.4000/- to P.W.16 and got back the ear studs. Again A-2 asked P.W.16 to pledge the studs as he required money for doing coconut business. Accordingly, P.W.16 pledged the ear studs with Muthoot Finance and gave Rs.5300/- to him. It is her further evidence that two days later police came with A-2 and seized the Pawn

Receipt. It is her further evidence that she paid a sum of Rs.5300/- ; redeemed M.O.6-ear studs and handed over the same to the police, which was seized under Ex.P.14-Mahazar.

[j] P.W.28-Sridhar is the son of P.W.16. In his evidence, he has stated that on 16.02.2013, A-2 came to their house and handed over M.O.6 to his mother and got Rs.4000/-. Thereafter, P.W.28 has pledged the same with Muthoot Finance and gave Rs.5300/- to his mother-P.W.16. P.W.16, in fact paid the amount to A-2. Thereafter, on 23.02.2013, A-2 was brought to his house by the police and obtained the Receipt [Ex.P.6] and again, on 27.02.2013, police came and seized M.O.6.

[k] P.W.15-Gurumoorthy, a resident of Selambangoundanpalayam is the owner of Lathe known as "Kamatchiamman Grill Works". On 16.02.2013, at about 2.00 a.m., while he was in the work shop, both accused came and asked for some water. When enquired, the accused told that they are from Anthiyur and that there was no bus. The next day, the Inspector came and examined him.

[l] P.W.18-Krishnamoorthy had stated that he has seen two persons coming out of the house of the deceased on the night hours on 15.02.2013 and he has also found a TVS-50 Moped in front of the house.

[m] P.W.4-Venkidusamy is the owner of Moped bearing Registration No.TN-36-W-5268. On 15.02.2013, while he was talking with his friend Murugan, in front of the tailor shop, A-1 came and requested him to give his vehicle as his wife was unwell and that he has to take her to the hospital. P.W.4 informed A-1 that there was no fuel in the vehicle. However, A-1 informed P.W.4 that he will fill the fuel. As A-1 did not return back with vehicle even after two hours, P.W.4 went to the house of A-1 and enquired the mother of A-1. However, he did not find A-1 there. Again, on the next day morning, P.W.4 went to the house of A-1 and at that time, he met the wife of A-1 and enquired about her health. She told him that she was fine and that her husband did not return home throughout the night on 15.02.2013. Again, P.W.4 went in search of A-1 and his vehicle. At that time, P.W.4 received intimation from the police over phone and he has identified M.O.1-TVS-50 in the police station.

[n] P.W.25-the Investigating Officer, continued his investigation, till his transfer on 03.04.2013. He handed over the Case Diary to his successor.

[o] P.W.26-Shanmugam, Inspector of Police, Bhavani Circle, continued the investigation and after the receipt of Lab Reports, examination of witnesses and recording of their statements, laid Final Report against A-1 and A-2 for offences u/s.447, 302 and 394 IPC before the learned Judicial Magistrate, Bhavani, who took it on file in PRC.No.12/2013

and issued summons to the accused and on their appearance, furnished them the copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of Principal District and Sessions Judge at Erode, who in turn, had made over the case to the learned Sessions Judge, Mahila Fast Track Court, Erode, who took it on file in SC.No.41/2014 and on appearance of the accused, had framed the charges u/s.447, 302 and 394 IPC and questioned them. The accused pleaded not guilty to the charges framed against them.

[p] The prosecution, initially, in order to sustain their case, examined P.Ws.1 to 26 ; marked Exs.P.1 to 51 besides marking M.Os.1 to 11.

[q] The accused were questioned under section 313 [1][b] Cr.P.C., with regard to the incriminating circumstances made out against them in the evidences rendered by the prosecution and they denied it as false. No oral or documentary evidence was let in on the side of the defence.

[r] The Trial Court, initially, on consideration and appreciation of the oral and documentary evidences and other materials, has found that the circumstances relied upon by the prosecution, has been established beyond all reasonable doubt and convicted the accused for the aforesaid offences. On Appeals before this Court, they were acquitted by a Division Bench of this Court under judgment 05.08.2016, and also remanded the matter back to the Trial Court with certain directions to the learned Principal District and Sessions Judge, Erode District [cited supra]. The said Court, upon appreciation of the oral and documentary evidences produced both, on the side of the prosecution as well as the defence, had acquitted the accused, by observing that the circumstances relied on by the prosecution, has not been clinchingly proved. Aggrieved over the same, the present appeal came to be filed by P.Ws.1 and 6 - brother and son of the deceased Rajammal.

3 Mr.N.Manoharan, learned counsel appearing for the appellants vehemently made the following submissions:-

- The deceased Rajammal was living in her farmhouse and she was wearing M.O.6-ear studs and M.O.7-gold chain. When she was found dead in the early morning on 16.02.2013, those material objects were found missing. Ex.P.1-complaint came to be filed immediately. P.W.6 - son of the deceased was in Chennai at the relevant time. Missing of M.Os.6 and 7 have been spoken by P.Ws.1, 6 and others.

- The circumstantial evidence relied on by the prosecution, have been proved by the prosecution clinchingly without any pale of doubt. P.W.8 and P.W.27-father and daughter, are relatives of A-1 and similarly,

P.W.16 and P.W.28-mother and son, are relatives of A-2. P.W.9 is the owner of the land where P.W.8 was working. P.W.29 is the owner of the jewelry shop owner. Similarly, P.W.10 is the Manager of Muthoot Finance and the evidence of the above witnesses had clinchingly established the fact that both the accused were found in possession of the jewels [M.Os.6 and 7] worn by the deceased. P.W.16 and her son-P.W.28 [relatives of A-2] in categorical terms, have stated that A-2 came to their house with M.O.6-ear studs and received the amount from P.W.16 and 3 days thereafter, A-2 repaid the amount and got back the studs and requested P.W.16 to pledge the same. Accordingly, P.W.28 pledged M.O.6 with P.W.10-Manager of Muthoot Finance and the Investigating Officer has seized M.O.6 from P.W.10. The evidence of P.Ws.16 and 28 cannot be discarded and they are relatives of A-2 and there was no motive whatsoever suggested against them for false implication. Similarly, P.W.8-Elamparuthi and his daughter, P.W.27-Rekha are the relatives of A-1 and their evidence has clinchingly established the fact that A-1 went to their house on 16.02.2013 with M.O.7 and requested P.W.8 to mobilise fund by pledging the same. Accordingly, P.W.8 requested his employer P.W.9, [who is known to P.W.28-Pawn Broker] to recommend for pledging M.O.7 and to pay the amount. Accordingly, chain was pledged with P.W.9 and it was recovered on the basis of the disclosure statement made by A-1. Therefore, it is the submission of the learned counsel for the appellants that the relatives of the accused persons have no axe to grind against the accused and hence, their evidence cannot be discarded.

- P.W.4, in his evidence has clearly stated that on 15.02.2013, A-1 took his two-wheeler under the pretext of taking his unwell wife to the hospital and his vehicle was seized by the police in front of the house of the deceased.

- P.Ws.13 and 14 - lodge owners, in their evidence have spoken about A-2 staying in their respective lodges after the occurrence.

- P.W.15 had seen both the accused on 16.02.2013 at 2.00 a.m. Similarly, P.W.18 also seen two persons coming out of the house of the deceased. These facts clearly establish the complicity of the accused and there was no explanation whatsoever on the side of the accused as to the possession of the jewels worn by the deceased immediately after the occurrence, Hence, presumption has to be applied against them.

- Ex.P.6 and other documents produced by the prosecution cannot be doubted.

Hence, it is the submission of the learned counsel for the appellants submitted that the findings of the Trial Court is not based on proper appreciation of evidence and it is the fit case where the accused ought to have been convicted and prayed for allowing of the appeal, by reversing the judgment of the Trial Court.

4 Per contra, Mr.T.Gowthaman, learned counsel appearing for the respondents 2 and 3 / accused submitted that the recovery relied on by the prosecution is not believable. The evidence of P.Ws.16 and 28 is highly inconsistent with each other. Subathra, neighbour of P.W.16, who allegedly gave Rs.4000/- at the instance of P.W.16, has not been examined despite the matter has been remanded and the prosecution was given an opportunity to examine further witnesses. Similarly, one Ramaakkal, who went along with P.W.2 on 16.02.2013, for work in the farmhouse of the deceased, has not been examined. It is fatal to the prosecution. The ledger to show that M.O.6 was pledged, has not been seized and in the recovery Mahazar of M.O.6, there is an interpolation, inserting colour of the stone in the ear studs, which creates serious doubt. Similarly, the evidence of P.Ws.8, 9, 27 and 29 is also highly doubtful and unreliable. It is his further submission that the evidence of P.W.8 and P.W.27 shows that they are known to P.W.29 for very many years. That being the case, there was no necessity whatsoever for them to seek the recommendation of P.W.9. Further, the evidence of P.W.9 shows that he did not go to the Pawn shop at the relevant time. Whereas, P.W.29 states the presence of P.W.9. It is the evidence of P.W.29 that it was only P.W.9 who had introduced the accused to him. All these facts creates doubt about the recovery. The recovery Mahazars, statements of witnesses reached the jurisdictional Court with inordinate delay, for which, there is no plausible explanation forthcoming. Further, the arrest of the accused is also highly doubtful. It is also not known as to how the police got the photograph of the accused before his arrest and the same has not been properly explained. The recovery of M.O.1, which is said to be the vehicle of P.W.4 is also doubtful and the ownership of the vehicle has not been properly established. P.W.4, in his evidence, had in fact admitted that he has got no licence and his evidence is also highly artificial and hence, submitted that the entire prosecution case is shrouded with improbabilities and inconsistencies. Learned counsel submitted that the conviction of the accused in a grave crime cannot be based merely on the basis of doubtful evidence with regard to the alleged recovery. Hence, he had submitted that the Trial Court, on a thorough consideration of the oral and documentary evidences, had rightly reached the conclusion to to acquit the accused and this Court, in exercise of its Appellate Jurisdiction, may not interfere with the same and prayed for dismissal of the appeal.

5 Heard the submissions of Mr.V.Arul, learned Additional Public Prosecutor appearing for the State on the submissions made by the learned counsel for the appellants and learned counsel for the respondents 2 and 3 and perused the records including the originals.

6 In the light of the above submissions, it has to be analysed whether the Trial Court is correct in acquitting the accused or not?

7 We are aware of the fact that unless that the findings of the Trial Court is perverse, the order of acquittal recorded by the Trial Court, cannot be interfered with. In the above background, we deem it to re-appreciate the entire evidence on record to find out whether the order of Trial Court is liable to be interfered with and the accused are entitled to benefit of doubt.

8 The prosecution has mainly relied upon the following circumstances:-

- [i] Evidence of P.Ws.1 and 6 as regards missing of M.Os.6 and 7 and identification of the same by them before Court.
- [ii] Last Seen Theory.
- [iii] Taking the vehicle, viz., two-wheeler of P.W.4 by A-1.
- [iv] Arrest and Recovery of M.Os.6 and 7
- [v] Stay of A-2 [Palanisamy] in two different lodges owned by P.Ws.13 and 14 after the occurrence.

CIRCUMSTANCE No.1-EVIDENCE OF P.Ws.1 and 6 AS REGARDS MISSING OF M.Os.6 and 7 AND IDENTIFICATION OF THE SAME BY THEM BEFORE COURT:-

9. No doubt, deceased Rajammal was done to death in her farmhouse. The evidence of the Medical Officer and the Postmortem Certificate and Viscera Report, clearly establish the factum of homicidal violence. It is the case of the prosecution that only the accused committed the murder for gain and that M.Os.6 and 7 [ear studs and gold chain] said to have been worn by the deceased, were found missing after her death.

10. P.W.1-brother of the deceased Rajammal has set the law in motion by loding Ex.P.1-complaint. P.W.6 is the son of the deceased and the occurrence took place in the night hours on 15.02.2013. P.W.2-an employee, working under deceased, as usual, in the morning hours on 16.02.2013, went to the farm house of the deceased along with one Raamathal to meet the deceased and to find out the nature of work to be done by them on that day. On reaching the house, they found the deceased lying dead. Immediately, P.W.2 called P.W.6-son of the deceased who was at Chennai at that time, over phone and informed him about the death of the deceased. P.W.6, in turn, asked his uncle, P.W.1 to visit the house of his mother and

P.W.1 also rushed to the spot and found his sister lying dead and M.Os.6 and 7 were found missing. It is to be noted that when P.W.1 was examined on 21.05.2014 before the Trial Court, he has not identified M.Os.6 and 7. However, when the matter was remanded back by this Court, P.W.1 was again re-called on 17.11.2016 and he identified those material objects for the first time before the Court.

11 P.W.3 is also related to P.W.1. He has also identified M.Os.6 and 7 after re-call on 17.11.2016, though he has not identified those material objects when he was examined during the year 2014.

12 P.W.6-son of the deceased in his evidence has stated that M.Os.6 and 7 were worn by his mother before he left for Chennai. It is to be noted that when P.W.6 was examined on 22.05.2014, he has never stated anything about the chain and ear studs worn by his mother. Only when he was re-called on 17.11.2016, after the direction of this Court, the specific part of the evidence that he saw M.Os.6 and 7 on his mother's ears and neck prior to leaving Chennai, was introduced. Hence, this part of the evidence of P.Ws.1 and 6 is bristled with serious doubts and the same cannot be relied upon.

CIRCUMSTANCE No.2:-LAST SEEN THEORY:-

13 The prosecution relied upon the theory of last seen of the accused by P.Ws.15 and 18. It is the evidence of P.W.15 that on 16.02.2013 at about 2.00 a.m. when he was in his workshop at

Selambakoundanpalayam, the accused came there and requested for water and told P.W.15 that they are coming from Anthiyur. It is to be noted that P.W.15 is not known to the accused and for the first time, he had deposed that he allegedly seen the accused. No Test Identification Parade, whatsoever was conducted by the prosecution. Of course, this evidence does not prove the theory of last seen. Even assuming that both the accused were together at the relevant point of time, in the absence of any other materials connecting the accused and the crime, the prosecution cannot succeed in establishing the case, only on the basis of the evidence of P.W.15. No incriminating materials against accused can be gathered from the evidence of P.W.15. Similarly, P.W.18, in his evidence has stated that he saw two persons coming out of the house of the deceased during night hours on 15.02.2013. But, P.W.18 has not identified the accused. Thus, his evidence is no way helpful to the prosecution in any manner. The possibility of some other persons, numbering 2, coming out of the house of the deceased, cannot be ruled out, even if the evidence of P.W.18 is believed. Therefore, this circumstance relied on by the prosecution, falls to ground.

CIRCUMSTANCE NO.3-TAKING OF P.W.4'S VEHICLE [TWO WHEELER] BY A1:-

14 Yet another circumstance relied on by the prosecution is that on 15.02.2013, A-1 took the vehicle [M.O.1], viz., TVS-50 Moped, of P.W.4 under the pretext of taking his wife to hospital. The evidence of the witnesses and the Investigating Officer shows that M.O.1 was found parked in front of the house of the deceased on the date of seizure, i.e., on 16.02.2013. A careful perusal of the evidence of P.W.4 in this regard, who was examined by the prosecution to speak and prove about the factum of A-1 taking his vehicle on 15.02.2013, would show that A1 allegedly took the vehicle from P.W.4. Despite P.W.4 informing A-1 about the non-availability of fuel in his vehicle, A-1 took the vehicle stating that he will fill the fuel. As A-1 did not turn up quite some time thereafter, P.W.4 went to the house of A-1 on the same day evening and enquired A1's mother. Since A-1 did not return back, P.W.4 went to the house of A-1 on the next day morning, i.e., on 16.02.2013, where he met the wife of A-1. When he enquired about her health, she informed him that she was fine and that her husband did not return the previous night on 15.02.2013. Hence, P.W.4 went in search of his vehicle and A-1. At that time, he received a phone call from the police station and P.W.4 identified his vehicle in the police station. It is to be noted that P.W.4, in the cross-examination, has admitted that he has no license to drive the vehicle. Further, there is no whisper whatsoever in the investigation about the finding of the RC Book and the Ration Card of P.W.4 from the vehicle. The evidence of P.W.4 also shows that A-1 towed the vehicle to the Petrol Bunk to fill the fuel ; whereas it is the evidence of P.W.25- Investigating Officer that there are no Petrol Bunk in and around 4 Kilometres. Therefore, the evidence of P.W.4 that A-1 took the vehicle to fill fuel in the nearby Petrol Bunk is highly improbable and cannot be believable. It is further to be noted that P.W.4 and A-1 are not known to each other and are not neighbours and A-1 is residing 3 kilometers away from P.W.4's residence. Therefore, the evidence of P.W.4 that A-1 came and asked for his vehicle and also towed the vehicle, is not believable and not trustworthy and creates a serious doubt about his evidence. Even assuming that A-1 took the vehicle of P.W.4 and filled fuel, it is highly improbable to countenance the contention of the prosecution for the reason that having gone in a vehicle to commit an offence, the normal conduct of the accused would be not to park the vehicle in front of the victim's house. Further, it is not known as to how the Investigating Officer came to know that it was only P.W.4, who is the owner of the vehicle and the same is also doubtful in the absence of any material. Admittedly, no RC Book whatsoever was seized in this regard and it is also not known as to how the Investigating Officer is able to point out the ownership of the vehicle without examining any witnesses. If really Ration Card and RC Book were found in the vehicle,

as stated by the Investigating Officer, nothing prevented the Investigating Officer from producing the same before this Court. Curiously the said documents were not marked as prosecution exhibits. Therefore, the evidence of P.W.4 about giving in his vehicle to A-1 is highly doubtful and artificial.

15 Similarly, the evidence of P.W.4 in enquiring the mother and wife of A-1 about his whereabouts, is also not substantiated by the prosecution and the Investigating Officer has not even made any attempt to examine A-1's mother and wife and record their statements. Hence, P.W.4's evidence is attached with some artificiality. Further, even if P.W.4 was examined by P.W.25 then and there, his statement recorded u/s.161[3] Cr.P.C., would have reached the Court immediately. Whereas, the statement of P.W.4 reached the Court only on 15.03.2013 and the delay in despatching the statement of the witness also assumes significance. In fact, the above also creates some doubt in the evidence of P.W.4. Therefore, the theory of the prosecution that P.W.4 had given his vehicle to A1 is unbelievable. In the absence of production of RC Book and Licence, the ownership of the vehicle, cannot be presumed merely on the basis of P.W.4's evidence which is attached artificiality. Hence, this circumstance projected by the prosecution is also not clinchingly established beyond reasonable doubt.

CIRCUMSTANCE No.4-ARREST AND RECOVERY:-

16 The most important circumstance relied upon by the prosecution is arrest and recovery of the material objects. It is the evidence of the Investigating Officer that on 23.02.2013, he arrested A-1 [Sengottaiyan] on the basis of his photograph in the presence of P.W.1 and recorded his confession, in pursuant to the same, he went to the house of P.Ws.8 and 27 at Chennampattinam, Karnataka and recovered M.O.7-gold chain from P.W.29. It is to be noted that admittedly, FIR has been registered against unknown persons. It is curious to note that before effecting arrest of the accused, there was no clue whatsoever as to their identity. When that be so, it is not known as to how the Investigating Officer was able to collect photograph of A-2. This fact also creates a doubt about the prosecution version. It is further to be noted that when P.W.25-Investigating Officer was examined on 23.05.2014, before remanding of the matter by this Court, his specific evidence was that on 23.02.2013, he arrested only A-2 on the basis of the photograph and thereafter, he took A-2 to P.Ws.8 and 27's house and recovered M.O.7-gold chain from P.W.29. Only in the re-call during the year 2016, i.e., on 15.12.2016, he has given a different version that as if he has arrested only A-1 and it is his version that in stead of A1's name, A2's name has been wrongly typed in the chief examination. Even assuming that it is only a typographical error, if his evidence is taken in its

entirety and even if it is assumed that he has arrested only A-1 and went to Chennnapattinam at Karnataka and seized M.O.7 from P.W.29 on the same day, his evidence is totally unbelievable for the simple reason that the evidence of P.Ws.16 and 28-Malliga and Sridhar, shows that on 23.02.2013, in the evening hours, the Investigating Officer came along with A-2 to their house and recovered Ex.P.6 at his instance. Admittedly, Chennampattinam at Karnataka is a place near Bangalore and when the Investigating Officer proceeded with A-1 to seize M.O.7-gold chain from P.W.29, the possibility of the same Investigating Officer accompanying A-2 to the house of P.W.16 on the same day is highly improbable and impossible. Admittedly, P.Ws.8 and 16 are residing at Mettur, Salem District. This creates a serious doubt about the prosecution theory of arrest and recovery of M.O.7-chain.

17 In the light of the above evidence of P.W.25-Investigating Officer, let us now analyse the evidence of P.Ws.8, 9, 27 and 29 with regard to seizure of M.O.7. P.W.8, in his evidence had stated that A-2 is his relative and on 16.02.2013 at about 6.00 p.m., A-2 came to his residence along with A-1 and gave M.O.7-chain and requested him to pledge the same and to get the money. He also assured that evidence would repay the amount after four days. Accordingly, P.W.8 took him to P.W.29-owner of the shop. As the amount involved is on the higher side, the person incharge of the shop asked P.W.8 to speak to P.W.29. Thereafter, P.W.8 brought the accused back home and immediately contacted P.W.27-his daughter and also contacted his employer-P.W.9 to recommend the case of the accused to P.W.29 for payment of money on pledging M.O.7. Subsequently, P.W.27 took the accused to P.W.29 who paid the amount after receiving M.O.7. When the evidence of P.W.8 is carefully scanned, it is seen that he has stated that he know P.W.29 for ten long years and he has also stated that a Receipt was given in the name of his daughter and his evidence also shows that on 23.02.2013, when the Investigating Officer came for enquiry along with the accused, he has parted with a sum of Rs.58,000/- for redemption of M.O.7 and handed over the same to the Investigating Officer. Whereas, it is the evidence of P.W.27 that on 16.02.2013, both the accused came and gave M.O.7 for pledging and P.W.27 went to the shop of P.W.29 and pledged M.O.7 under Ex.P.52-Receipt, wherein she has signed first and thereafter, the same was scored and her father-P.W.8 had signed. Thereafter, on 23.02.2013, A-1 was brought by the police and P.W.27 paid Rs.58,000/- to P.W.29, redeemed M.O.7 and thereafter, it was handed over to the police. A careful perusal of Ex.P.52-Receipt shows that the name of P.W.9 is also found place before the name of P.W.8.

18 P.W.9 - employer of P.W.8, in his evidence has stated that as requested by P.W.8, he called P.W.29 and asked him to pay the money after getting M.O.7 pledged. His evidence also shows that he has never gone to the Pawn shop on

16.02.2013. Whereas, his name is found in Ex.P.52. When the evidence of P.W.9 is that he has never gone to Pawn shop, the presence of his signature/name in Ex.P.52 dated 16.02.2013, also creates some doubt. It is also his evidence that while seizure of M.O.7, no amount has been paid by P.W.8 or P.W.27. Whereas it is the categorical statement of P.Ws.8 and 27 that they have repaid the amount by themselves and got M.O.7 redeemed from P.W.29 and thereafter, handed over the same to the police. The evidence of P.Ws.8 and 27 to the effect of paying the amount of Rs.60,000/- for redemption of M.O.7, is highly impossible. The normal human conduct does not permit the payment when they are not at all found to be fault. Their evidence is highly inconsistent with the evidence of P.W.29.

19 When the evidence of P.W.29 in this regard is analysed and perused, he has stated that on 16.02.2013, both accused were brought by P.Ws.8 and 27 and P.W.29 gave Rs.58,000/- after receiving M.O.7 and he has given a receipt in the name of P.W.9. Thereafter, the receipt was changed in the name of P.W.27. His evidence in the cross-examination, shows that he does not know as to who has made the correction in the receipts and he has not signed in the place meant for PB [Pawn Broker] and he does not know as to who has signed in that page. If really P.W.29 has paid the amount, as per the prosecution version, there was no reason as to why he has not signed in the place meant for Pawn Broker and he does not even know who had signed the receipt. All these facts, creates serious doubt in the evidence of P.Ws.8, 27 and 29 with regard to seizure of M.O.7-gold chain.

20 Next comes the seizure of M.O.6 from A-2. To this, the prosecution has relied upon the evidence of P.Ws.16 and 28. P.W.16 had deposed that during February 2013, A-2 being her relative, came to her house and gave M.O.6 and requested some amount and P.W.16 gave a sum of Rs.4000/- to A-2 which amount she got from one Subathra, her neighbour and A-2 assured that he will pay the amount within two or three days. Thereafter, A-2 came and paid the amount and got M.O.6. Despite getting back the studs, A-2 again requested P.W.16 to pledge the same as he required money for his business. Accordingly, P.W.16 went to Muthoot Finance and pledged M.O.6-ear studs for a sum of Rs.5300/-. It is the further evidence of P.W.16 that three days later, when police came with A-2, she went to Muthoot Finance, paid Rs.5300/- and redeemed the ear studs and thereafter, handed over the same to the police. It is curious to note that the said Subathra has not been examined by the prosecution. It is the specific evidence of P.W.16 that she alone went to Muthoot Finance and pledged M.O.6. Whereas, it is the evidence of P.W.28-son of P.W.16, that on 16.02.2013, A-2 came to their house and requested Rs.4000/- by giving M.O.6 to P.W.16. It is his further evidence that his mother-P.W.16 gave Rs.4000/- borrowed by way of pledging the ear studs with Subathra and gave the money to

A-2. Again when A-2 came to the residence of P.W.16 for paying the amount, he asked P.W.1 to pledge the same and get the amount. Accordingly, P.W.28 pledged the ear studs-M.O.6 with the Muthoot Finance for Rs.5300/- and gave the amount to A-1. Thereafter, on 23.02.2013, when police came with A-2 to their house, it is the specific evidence of P.W.28 that he went to Muthoot Finance, paid Rs.5300/- and redeemed the jewel and thereafter, handed over the same to police. Hence, the evidence of P.Ws.16 and 28 is highly inconsistent and not corroborated with each other. It is also the categorical version of P.W.16 that she borrowed the amount from her neighbour and paid the cash of Rs.4000/- to A-2 on the first occasion. She had never stated that she pledged M.O.6 with Subathra, her neighbour. Whereas, P.W.28, in his evidence, has stated otherwise, i.e., his mother-P.W.16 has pledged M.O.6 with Subathra on the first occasion and thereafter, it was redeemed and again it was pledged with Muthoot Finance by P.W.28. This aspect also throws considerable suspicion in their respective evidences.

21 It is also to be noted that as per the evidence of P.W.25-Investigating Officer, he arrested A-1 [Sengottaiyan] in the presence of P.W.11. Thereafter, he proceeded to Chennampattinam, Karnataka for seizure of M.O.7-gold chain. Ex.P.9, the alleged Seizure Mahazar for M.O.7 shows that M.O.7 was seized at about 6.30 p.m. On 23.02.2013 at Chennampattinam from P.W.29. When that be so, it is highly impossible to come to Mettur at Salem District on the same day evening with A-2 by the very same Investigating Officer to the residence of P.W.16 and P.W.28. The lackadaisical attitude of the Investigating Officer in investigating the case is clearly exposed. He had casually sent the material documents to the Court with an inordinate delay. The so-called seizure of vital properties have not seen to the Court immediately along with Form 91. The same were sent to Court belatedly. Similarly, the receipts seized from P.W.29 has also reached the court with four months delay. Ex.P.6-Receipt issued by P.W.10 and seized from P.W.16 also reached the Court only on 11.03.2013 All the above facts creates a serious doubt about the arrest and recovery projected by the prosecution. It is to be noted that Ex.P.6 is nothing but a Cash Receipt for payment of cash of Rs.5300/- by P.W.28-Sridhar. If really M.O.6 has been pledged on 21.02.2013, there must be a receipt issued for such pledging. Whereas Ex.P.6 is only a cash paid receipt for a sum of Rs.5300/- on 21.02.2013 by P.W.28 for redemption of M.O.6, The evidence of P.W.16 further indicate that she has signed in the Ledger at the time of pledging. She has also shown the Ledger to the police. But the said Ledger has not been seized by the Investigating Officer. It is to be noted that the said payment receipt is dated 21.02.2013, which shows that the cash for redeeming M.O.6 was paid only on 21.02.2013 by P.W.28. Whereas, in the chief examination, PW.28 had stated that the police had seized the receipt on 23.02.2013 itself. If really the cash is paid on

27.02.2013, there was no necessity for P.W.10 to issue the receipt for repayment on 21.02.2013 itself. The receipt-Ex.P.6 shows repayment of Rs.5300/- on 21.02.2013 only. It is to be noted that merely because P.Ws.16, 28, 8 and 27 happened to be the relatives of the accused, in view of the serious discrepancies and inconsistencies found out in their evidence and in the evidence of the Investigating Officer, their evidence cannot be relied upon in a grave crime, only on the ground of their relativity with the accused. Of course, no motive whatsoever is suggested against them by the defence counsel. Lack of legal acumen and poor cross-examination by the learned counsel on record, cannot be a ground to apply the evidence as it is against the accused. Hence, the alleged seizure of M.Os.6 and 7 projected by the prosecution is highly doubtful in this case. We are not in a position to accept the prosecution case. It is well settled that every circumstances brought on record, must be established by reliable and clinching evidence and circumstances so proved, must form a chain of events from which, the only irresistible conclusion about guilt of the accused can be safely drawn and no other hypothesis against guilt is possible.

22 It is also curious to note that Ex.P.52-Receipt said to have been seized on the same day, i.e., on 23.02.2013, is reached the Court only on 25.07.2013, with an inordinate delay. Further, the copy of the Bill Book has also not been seized by the prosecution. There was also no explanation whatsoever in this regard by the Investigating Officer in the case involving murder for gain. If such a vital document, Ex.P.52, is allegedly collected by the Investigating Officer, there was no reason as to why he has not forwarded the said document to the Court immediately. Whereas, for the first time, this has been sent to the Court on 25.07.2013. Similarly, Form-95 [Ex.P.51] sent to the Court on 25.02.2013, was in fact returned on the ground that the property has not been produced. Similarly, the so-called M.O.6 allegedly seized on 27.02.2013, was also not sent to the Court immediately despite Form-91 was sent to Court on 28.02.2013. Form-91 was also returned by the Judicial Magistrate with a direction to produce the property. If really M.O.6 was also seized on 27.02.2013 from Muthoot Finance, the same ought to have been sent to the Court immediately. It is further to be noted that Ex.P.45-Form 91 relating to the seizure of M.O.7-gold chain, was sent to the Court on 24.02.2013. The above document was also returned by the Judicial Magistrate on the ground that no property was produced. Thereafter, Form 91 was re-submitted only on 20.03.2013. Even the Receipt-Ex.P.52 had also reached the Court only during July 2013, with an inordinate delay. All these facts also create serious doubt about the seizure of M.Os.6 and 7.

23 It is further to be noted that though P.Ws.8, 9, 27 and 29 were examined by the Investigating Officer on the date of seizure of M.Os.6 and 7, their statements recorded

u/s.161[3] Cr.P.C., reached the Court for the first time on 15.03.2013 with an inordinate delay. The lackadaisical attitude and callousness in investigation on the part of the Investigating Officer is also clearly exhibited in this case. Though P.Ws.1, 6 and 3 had stated that M.Os.6 and 7 were worn by the deceased, their evidence also cannot be given much importance. As already discussed and at the risk of repetition, P.W.1, at the first instance when he was examined in the year 2014, he has not even identified M.Os.6 and 7 in his evidence and only in the year 2016 after the remand by this Court, the prosecution examined him and he had identified those material objects. So also P.W.3. P.W.6-son of the deceased, when he was examined for the first time, in the chief examination, had never stated anything about M.Os.6 and 7 and only in the cross-examination, he had stated that those material objects were purchased by his mother. But, he has not given any specific description. He has identified those objects only when he was re-called on 17.11.2016. Therefore, the possibility of filling up the lacuna at the later point of time by the prosecution by examining witnesses, also cannot be ruled out in this case. Similarly, the seizure of Mahazar relating to M.O.6 when carefully scanned, the colour of the ear-studs has been inserted by a different ink. None of the witnesses have spoken about the specific colour of the ear studs. We are also aware that when the prosecution is able to prove the possession of the jewels at the hands of the accused soon after the occurrence, a presumption can be drawn against the accused as per section 114[a] of the Indian Evidence Act. When the alleged recovery of the jewels from the accused itself has not been clinchingly established by the prosecution, a presumption cannot be drawn against the accused merely on the basis of such recovery of the gold ornaments said to be belonging to the deceased. Therefore, when the prosecution had an opportunity to examine all the witnesses at the initial stage, it failed to examine the material witnesses and only after the remand of the matter, it examined some new witnesses and also re-called the existing witnesses to improve their case stage by stage and the same cannot be given much

credence. In the light of the above infirmities and discrepancies in the evidence of the prosecution witnesses for the alleged seizure and recovery of M.Os.6 and 7, we are of the view that it is highly unsafe to place reliance on those evidences to invoke presumption against the accused.

CIRCUMSTANCE No.5:-STAY OF A-2 IN THE RESPECTIVE LODGES OWNED BY P.WS.13 AND 14:-

24 The last circumstance relied on by the prosecution is the evidence of P.Ws.13 and 14, lodge owners to show that A-2 stayed in their lodges on 18.02.2013 and 22.02.2013. Merely because A-2 stayed in Ooty on 18.02.2013, that itself cannot be a ground to presume that he had only committed the offence. P.W.14, in his evidence, has stated

that A-2 stayed in his Lodge on 22.02.2013. But no documents whatsoever was collected by the Investigating Officer in that regard. Therefore, the evidence of P.W.14 cannot be given any importance. If really the accused had stayed in the lodge, there must be entries in the Lodge Books. But no documents whatsoever has been seized by the Investigating Officer. Hence, this circumstance projected by the prosecution also does not help the prosecution in any manner.

25 In view of the aforesaid discussion and reasonings, this Court is of the considered view that there are missing links in the chain of circumstances projected by the prosecution and the prosecution has failed to prove its case beyond all reasonable doubt. Hence, this Court has come to the irresistible conclusion that the findings of the learned Principal Sessions Judge, Erode, under judgment 14.02.2017 warrants no interference at the hands of this Court.

26 In the result, the criminal appeal is dismissed and the judgment of Acquittal awarded by the learned Principal Sessions Judge, Erode in SC.No.41/2014 dated 14.02.2017 is hereby confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District and Sessions Judge
Erode.

2.The Sessions Judge
Mahila Fast Track Court, Erode.

3.The Judicial Magistrate,
Bhavani.

4.The Chief Judicial Magistrate
Erode District.

5.The Inspector of Police
Bhavani Circle,
Aapakkoodal Police Station
Erode District.

6.The District Collector
Coimbatore.

7.The Director General of Police
Mylapore.

8.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.N.Manokaran, Advocate Sr.No.15662
+1cc to Mr.T.Gowthaman, Advocate Sr.No.15856

VGII(CO)
sm:12.3.2018

Judgment in
Cr1.A.No.304/2017



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