

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : 05.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI**Crl.A.(MD)No.220 of 2018**

S.Ramachandran @ Splendor Ramachandran ...Appellant/Accused No 1

Vs.

The Deputy Superintendent of Police,
Kulithalai Sub-Division,
Kulithalai,
Karur District.

...Respondent/Complainant

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in Spl.S.C.No.7 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Karur, dated 08.12.2016 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.M.Saravanan

For Respondent : Mr.R.Anandharaj

Additional Public Prosecutor

JUDGMENT**B. PUGALENDHI, J. ,**

This appeal is preferred by the first accused in Special S.C.No.7 of 2015 on the file of the Fast Track Mahila Court, Karur. The first accused was charged for the offence under sections 364, 394 r/w 397, 302 IPC and section 3 r/w 4 of POCSO Act,2012. The second accused was charged for the offence under section 414 IPC. In conclusion of the trial, the trial Court, by judgment dated 08.12.2016, found them guilty, convicted and sentenced them as follows:

Accused	Offence	Punishment
A1	364 IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.1000/-, failing which, to undergo simple imprisonment for one month.
	394 r/w 397 IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.1000/-, failing which, to undergo simple imprisonment for one month.
	302 IPC	To undergo imprisonment for life and to pay a fine of Rs.1000/-, failing which, to undergo simple imprisonment for one month.
	376(2) (m) IPC	To undergo imprisonment for the remainder of natural life and to pay a fine of Rs.1000/-, failing which, to undergo simple imprisonment for one month.
A2	414 IPC	To undergo rigorous imprisonment for three years.



Aggrieved over the conviction and sentence, the first accused alone has preferred the instant appeal.

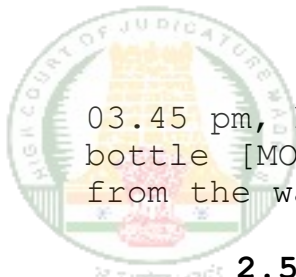
2. The brief facts of the case, as projected by the prosecution, in a nutshell, are as follows:

2.1. The defacto complainant, namely, Ponnuswamy [PW1] is the father of the victim, namely, Vinitha. The victim was 16 years old at the relevant point of time and was working in VKA Polymer Mosquito Net Company, Karur, during her school vacation. On 23.06.2014 evening, she left the Company through bus and took her bicycle [MO8] that was parked in the vacant site of one Durisamy [PW12] and started for her house. When she came near Krishnarayapuram - Pichampatti, at about 07.00 pm, the appellant / first accused was standing near Muniyappan's [PW8's] field with his motorcycle [MO17] and he tricked the victim girl, abducted her into PW8's field. The appellant, at knife point, snatched the pair of gold stud [MO1], weighing 4.200 gram, worn by the victim; had forcible sex with her; and also strangled her to death.

2.2. After the incident, when the appellant departed from PW8's field in his motorcycle [MO17], one Murugesan [PW15], a Milk Vendor, witnessed him and enquired him. The appellant replied that he came for the village festival and left the place. One Senthilkumar [PW4] has seen the victim's bicycle [MO8] in the road and he informed the same to one Anandan [PW5], who, in turn, went to the occurrence place and witnessed the deceased's body and informed her father [PW1]. PW1, on receipt of the information, went to the place of occurrence, witnessed his daughter's body and thereafter, and lodged a compliant [Ex.P1], before the Sub-Inspector of Police [PW40] at about 01.30 am on 24.06.2014.

2.3. The Sub-Inspector of Police [PW40], on receipt of the complaint [Ex.P1], registered a case in Crime No.125 of 2014 for the offence under Section 302 IPC and Sections 5 & 6 of POCSO Act, 2012 and same was marked as Ex.P44. She, then, forwarded the complaint [Ex.P1] and the printed FIR [Ex.P44] to the learned Judicial Magistrate No.2, Kulithalai and to the higher authorities through the Constable Anuradha [PW32].

2.4. The Deputy Superintendent of Police [PW43], on receipt of the information as to the registration of the case, went to the occurrence place at about 02.15 am, prepared an observation mahazar [Ex.P2] and rough sketch [Ex.P49] in the presence of PW7 and another. He summoned the photographer [PW24], who took the photographs [MO14 series -16]. PW43, with the help of PW23, Forensic expert, recovered sample earth [MO2], a set of VKC Pride slipper [MO3], a half-burnt candle [MO4], a Nylon tube [MO5] and public hairs of the victim of varying sizes under a cover of mahazar Ex.P3. At about 03.30 am, PW43 has recovered a black handbag [MO6], tiffin box - 2 nos. [MO7], bicycle [MO8] near Kannathu Drain and at about



03.45 pm, he has recovered an empty brandy bottle [MO9], empty pepsi bottle [MO10], plastic tumbler - 3 nos.[MO11], water packet [MO12] from the waste land belonging to one Rajendran.

2.5. The Deputy Superintendent of Police [PW43] conducted inquest on the body of the deceased between 06.00 am and 08.30 am, in the Government Hospital, Karur, in the presence of panchayatars. The inquest report is marked as Ex.P50. He, then, forwarded the body for postmortem, through a lady Constable, Vijayalakshmi [PW33].

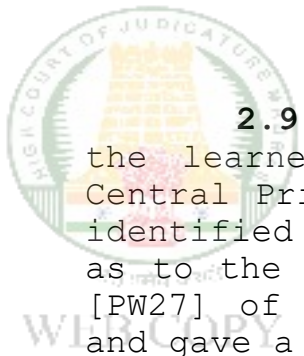
2.6. Dr.T.Sakthivel [PW25] and Dr.Sumathi of Government Hospital, Karur, received the requisition letter and commenced the postmortem at 11.35 am on 24.06.2014. The postmortem certificate is marked as Ex.P14. The Doctors have found the following external injuries on the body of the deceased:

- i) Perivaginal & vaginal blood stain present.*
- ii) Bite marks present over the both breast.*
- iii) Multiple scratches and contusions variable size present around the neck.*
- iv) Abrasion present, 3 x 2 cms left Elbow region."*

The Doctors, in conclusion of the postmortem and after receipt of the Chemical, Forensic, Pathological and Microbiological Reports, have given their final opinion that the deceased would appear to have died of asphyxia due to neck compression, 6 to 24 hours prior to Autopsy.

2.7. The Deputy Superintendent of Police [PW43], then, forwarded the recovered material objects for chemical examination through the learned Judicial Magistrate No.2, Kulithalai.

2.8. While so, on 30.12.2014, the Inspector of Police [PW39], Sinthamanipati Police Station, has taken custody of the accused in connection with the case in Crime No.90 of 2014 and the accused voluntarily confessed as to the commission of offence in Crime No.90 of 2014 as well as the present case in Crime No.125 of 2014. The Inspector of Police [PW39] passed on the information to the investigation officer [PW43], who, in turn, has formally arrested the first accused on 06.01.2015. Based on the confession statement given by the first accused, PW43 recovered the motorcycle [PW17] on 08.01.2015 and has also arrested the second accused near Lalapet Bus stand. Based on the confession statement given by the second accused, PW43 has recovered the jewel loan receipt [Ex.P9], acknowledgment for receipt / customer declaration [Ex.P10] under the cover of mahazar Ex.P24. On 09.01.2015, at about 08.00 am, based on the confession statement given by the second accused in the presence of the Revenue Inspector [PW30] and another, PW43 has recovered the pair of gold stud [MO1], a loan card [MO11] from Thiru Ashok Kumar [PW21], Manager, Muthalagu Finance Pvt., Ltd., Karur, under a cover of mahazar Ex.P25.



2.9. On 21.01.2015, an identification parade was conducted by the learned Judicial Magistrate No.1, Kulithalai [PW41], in the Central Prison, Tiruchirappalli and PW15, the Milk Vendor, has also identified the first accused. The report of the learned Magistrate as to the identification parade is marked as Ex.P45. Dr.Saravanan [PW27] of Government Hospital, Trichy, examined the first accused and gave a report [Ex.P17] that there is nothing to suggest that the first accused is impotent and that there is nothing to suggest that the first accused is incapable of performing sexual intercourse.

2.10. The Assistant Director [PW28], Forensic Science Department, Chennai, has given a report [Ex.P20] about the presence of blood in MOs.5, 18, 19, 21 & 22. The Scientific Officer [PW31], Forensic Science Department, Chennai, has given a report [Ex.P26] that human blood is detected in MOs.5, 19 & 21 and that the blood group could not be detected. The Assistant Chemical Examiner [PW38], Forensic Science Department, Chennai, has given a report [Ex.P41] that the DNA sample present in MOs.5 & 21 tallies with that of the deceased and the first accused.

2.11. The Deputy Superintendent of Police [PW43], in conclusion of the investigation and after collecting all the reports, has laid the charge sheet as against the accused persons.

3. In support of the prosecution, as many as 43 witnesses have been examined and 70 documents have been marked, besides 22 material objects. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. On the side of the defence, the accused have examined 5 witnesses, including the first accused as DW4 and marked an order copy passed by this Court in Cr1.OP.(MD) No.20294 of 2015 as Ex.D1. The trial Court has marked a document - 'Register of Papers Received' as Ex.C1.

4. In conclusion of the trial, the trial Court found the accused guilty, convicted and sentenced them as stated supra. As against the same, the appellant / first accused alone has preferred the instant appeal.

5. Heard, Mr.M.Saravanan, learned Counsel appearing for the appellant / first accused and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent / State.

6. Mr.M.Saravanan, learned Counsel for the appellant / first accused has raised the following points for the consideration of this Court:

6.1. The case is based on circumstantial evidence and the trial Court has come to the conclusion that the presence of the appellant in the place of occurrence at the time of occurrence has



been established by the prosecution through the evidence of PW15. According to the prosecution, PW15 is said to have witnessed the appellant / first accused in the place of occurrence at the time of occurrence. The occurrence was taken place on 23.06.2014, whereas, the statement of PW15 was recorded only on 10.01.2015, nearly after six months from the date of occurrence, for which, there was no explanation. Even according to PW15, he has not identified that it is the appellant / first accused, but by resemblance, he has referred the appellant.

6.2. The occurrence, according to the prosecution, took place around 07.00 pm in the night hours and PW15, in his evidence, has not spoken about having any torch or any instrument to visualize the appellant in the darkness. Moreover, the appellant / first accused was shown to PW15 in the police station and that is how, PW15 has identified him in the identification parade conducted in the Central Prison, Tiruchirappalli.

6.3. The trial Court ought to have rejected the expert opinion pertaining to the DNA test, as the same was not conducted by invoking the procedure enshrined under Section 53(a) Cr.P.C., and moreover, the copies of the report were also not served to the appellant / first accused.

6.4. The Doctor [PW25] in his evidence has stated that there were several size of teeth bits around the breast of the deceased, which illustrates the involvement of several other persons. Moreover, the bite mark analysis has not been done by the investigating agency.

6.5. By referring to Section 29 of the POCSO Act, that presumption can be drawn against such person who is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 & 9 of the Act, unless the contrary is proved, the trial Court has convicted the accused. But the trial Court has failed to appreciate the evidence of DW3 [wife of the appellant] and DW4 [appellant himself] that the appellant has been roped-in as an accused, due to the pressure on the police officials as they were not able to nab the real offender.

6.6. The prosecution has not established the case beyond any reasonable doubt, but has established the case only by preponderance of probability, based on which, the trial Court has convicted the appellant / first accused and therefore, he prays for interference.

7. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent / State would submit that the case is based on circumstantial evidence and the prosecution has established the chain of circumstances leading to an irresistible inference of the guilt of the accused. Therefore, according to the learned Additional Public Prosecutor, the conviction and sentence



imposed by the trial Court on the accused does not require any interference at the hands of this Court.

8. This Court has paid it's anxious consideration to the rival submissions and also to the materials placed on record.

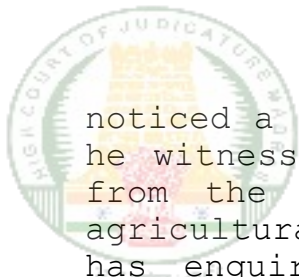
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9. This is a case based on circumstantial evidence. In a case based on circumstantial evidence, the prosecution is required to prove the circumstances projected by it beyond reasonable doubt and the proved circumstances should establish a close link with each other and form a complete chain unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt of the accused. Keeping this broad principles in mind, we have scrutinized the evidence carefully.

10. The deceased Vinitha is aged about 16 years and her School Transfer Certificate, issued by the Government Higher Secondary School, Krishnarayapuram, showing her Date of Birth as 02.07.1997, has been marked as Ex.P51. Therefore, at the time of occurrence, she was a child as per the definition under Section 2(d) of the POCSO Act.

11. The deceased Vinitha is native of Pitchampatti Village at Krishnarayapuram Taluk and after completing her School Education, during the vacation, she was working in a Mosquito Net Company, namely, VKA Polymers at Karur, along with PWs.6 & 9, as a daily wage. PWs.6 & 9, the co-workers, have stated in their evidence that the deceased Vinitha was also working in the said Company and on the date of occurrence, ie., on 23.06.2014, she has attended duty and while returning home, they went for some other purpose and while the deceased returning in her bicycle [MO8], the occurrence had taken place. The owner of the Mosquito Net Company, namely, Senthamarai Kannan [PW10], was examined and the Attendance Register maintained in that Company was marked as Ex.P56. Therefore, the prosecution has proved that on the date of occurrence, the deceased attended duty at VKA Polymers, Karur and returned home in the evening in her bicycle.

12. PW15, namely, Murugesan, is a Milk Vendor, residing at Seethalaivai Agraharam and he used to supply milk in the morning and evening to various places. On the date of occurrence, ie., on 23.06.2014, he crossed the occurrence place, Manjamedu, to reach Pitchampatti Village around 07.00 pm and at that time, he found a person aged about 25 to 30 years coming out of the beetle field belonging to one Muniyappan [PW8]. He was wearing a black pant and a white shirt. Since the person was strange and coming from another person's field, that too in an odd night hour, he enquired him, for which, that person replied that he came to the place for the purpose of village festival and also taken out a motorcycle, probably like a Splendor vehicle and went away. After supplying the milk, PW15 returned on the same road around 08.00 pm and at that time, he



noticed a red color ladies cycle [MO8], opposite to the place where he witnessed the strange person. On the next day, he came to know from the newspaper that a girl was raped and murdered in the agricultural fields of Munyiappan [PW8]. In this regard, the Police has enquired him on 10.01.2015 and after that, they have also summoned him for an identification parade, which was conducted at Central Prison, Tiruchirappalli, in the presence of the learned Judicial Magistrate, Kulithalai [PW41], on 21.01.2015.

13. On the request made by the investigation officer for an identification parade in Crime No.125 of 2014 on 12.01.2015, the learned Judicial Magistrate, Kulithalai [PW41], made a request to the Central Prison, Tiruchirappalli, for arranging the identification parade by his letter dated 13.01.2015. Accordingly, the identification parade was conducted in the Central Prison, Tiruchirappalli, on 21.01.2015 at about 11.30 am and PW15 was also present in the identification parade. The appellant / first accused was identified by PW15 in all the three times, when the first accused was asked to stand by changing his order and by changing the dress. In all the three times, PW15 has rightly identified the first accused and after completing the identification parade, the learned Magistrate [PW41] has also verified with the first accused as to whether he would like to submit anything on the said parade, for which, the first accused has stated that when he was in the police station, this witness [PW15] was brought to the police station and he was shown to PW15 and that he was no way connected with the offence. Thereafter, the learned Magistrate filed the report for the identification parade and the same was marked as Ex.P45.

14. On this identification parade, when the appellant / first accused was questioned under Section 313 Cr.P.C., he has stated that his photographs were shown to PW15 and through his photographs only, PW15 has identified him during the parade. But, a contra stand was taken when the learned Judicial Magistrate [PW41] questioned him on his submissions with regard to the parade conducted on 21.01.2015, that when the first accused was in the police station, PW15 was brought there and he was shown to him.

15. In this case, admittedly, the first accused was only formally arrested on 07.01.2015. When the appellant / first accused was in judicial custody in connection with a case in Sinthamanipati Police Station Crime No.90 of 2014, the concerned investigation officer in Crime No.90 of 2014, namely, Thiru Mohammed Idris [PW39] has taken him on police custody on 30.12.2014 and enquired this accused about the case in Crime No.90 of 2014, wherein, the accused has voluntarily gave a confession statement admitting the theft of motorcycle in Crime No.90 of 2014. During that enquiry, he also admitted his involvement in the case in Crime No.125 of 2014 on the file of the Mayanoor Police Station and therefore, PW39 informed the same to the investigation officer in Crime No.125 of 2014, namely, Thiru Jameen [PW43]. Thereafter, PW43 made a request for issuing a

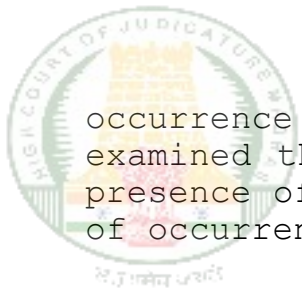


PT Warrant for a formal arrest in Crime No.125 of 2014 and accordingly, the appellant / first accused was formally shown as arrested on 07.01.2015.

16. Thereafter, PW43 made a request for police custody on 08.01.2015 and the learned Judicial Magistrate was pleased to grant police custody from 12.30 pm on 08.01.2015 to 12.25 pm on 09.01.2015. During the enquiry, the appellant / first accused gave a voluntary statement accepting the offence committed by him in this case and pursuant to his confession statement, a Hero Honda Splendor motorcycle, bearing registration no.TN-49-BA-2247 [MO17] was recovered from one Babu [PW20]. The first accused has also informed that the gold stud has been pledged in a pawn broker shop through the second accused and pursuant to his confession, the investigation officer [PW43] has arrested the second accused, namely, Manikandan on 08.01.2015 at about 07.00 pm.

17. Only on 10.01.2015, the Milk Vendor, namely, Murugesan [PW15] was examined by the investigation agency. The accused is taking contra grounds that PW15 could not have witnessed the first accused on the date of occurrence, since he was examined only on 10.01.2015, six months after the occurrence. Yet another stand was taken that this accused was shown to the witness [PW15] in the police station. The formal arrest of the first accused was made through the PT Warrant only on 07.01.2015 and thereafter, a requisition was made for police custody and the police custody was also given for one day from 12.30 pm on 08.01.2015 to 12.25 pm on 09.01.2015. Only after examining the first accused, the investigation officer was able to arrive at the exact time of the occurrence and accordingly, he also found the probable witnesses who have passed the occurrence place at the time of occurrence and examined the Milk Vendor [PW15] on 10.01.2015. Even before PW15 was examined, the police custody of the first accused was over on 09.01.2015 itself and the first accused was also produced before the Court, well before the examination of PW15.

18. PW15 is an ordinary Milk Vendor, who is passing through the occurrence place to supply milk to various places and though he was cross examined in detail, the accused were not able to demolish his evidence that he is not a Milk Vendor. PW15, in his evidence, has stated that every day, from Morning 04.00 am to 08.00 am, he used to supply milk to various places and similarly in the Evening. While passing through the occurrence place, he witnessed the first accused, a strange person, coming from the lands of PW8 and therefore, he also enquired him. Though PW15 came to know about the occurrence on the next day, it is not the case of the prosecution that immediately he went to the police station and informed about this incident to the police. As an ordinary Milk Vendor, he evaded from informing the same to the respondent police, but the investigation officer, after examining the accused on 08.01.2015, has examined the probable witnesses passing through the place of



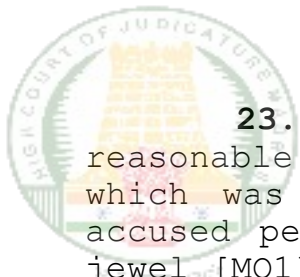
occurrence around the time of occurrence and accordingly, he examined the Milk Vendor [PW15] and PW15 has also stated about the presence of the first accused in the place of occurrence at the time of occurrence.

19. Moreover, PW15 has also identified the first accused in the identification parade conducted at Central Prison, Tiruchirappalli, in all the three times in the presence of the learned Judicial Magistrate, Kulithalai [PW41]. His evidence is very cogent and natural and there is no reason to disbelieve his evidence, mere because he came forward to give evidence after six months. It is not the case of the defence that PW15 is a relative of the deceased or a stock witness. Therefore, this part of the evidence of PW15 is reliable that the first accused came out of PW8's land on the date of occurrence at the time of occurrence.

20. The investigation agency, near the place of occurrence, has recovered an empty brandy bottle [MO9], empty pepsi bottle [MO10], plastic tumblers [MO11], water packet [MO12]. One Ilayaraja [PW14] has stated that he witnessed the appellant / first accused, on the date of occurrence, at about 06.45 pm, in the TASMAL Bar at Manjamedu.

21. Pursuant to the arrest of the second accused on 08.01.2015, the second accused has also gave a voluntarily confession statement admitting that on 25.06.2014, the appellant / first accused gave him a pair of gold stud and requested him to arrange money and accordingly, the second accused pledged the same in Muthalagu Finance Pvt., Ltd., Karur, for a sum of Rs.7800/-. In this regard, a receipt for pledging the jewel and a declaration customer copy with the signature of the second accused was issued by the Muthalagu Finance Private Limited, Karur, which were recovered from the residence of the second accused and marked as Ex.P9 and Ex.P10, respectively. Thereafter, on 09.01.2015, at about 08.00 am, the gold stud [MO1] was also recovered from the Muthalagu Finance Private Limited, Karur, in the presence of one Sudha [PW30] and another.

22. PW1 and his family have identified the jewel that it is the stud worn by the deceased at the time of occurrence. The sister of the deceased, Ramya [PW2], identified the stud and has also stated that this stud [MO1] was purchased from Shanmuga Jewellery Shop, Karur. The investigation officer [PW43] has also verified with the shop owner of Shanmuga Jewellery, namely, Dhandapani [PW22], where the jewel was purchased. PW22 has also admitted that the jewel [MO1] shown to him is having a seal 'PS' and therefore, this jewel has been purchased from his shop only. The friend of the deceased, PW6, who is also her co-worker, has also identified the gold stud [MO1], which is recovered pursuant to the confession statement of the accused persons.



23. Therefore the prosecution has proved beyond any reasonable doubt that the deceased Vinitha worn a gold stud [M01], which was recovered pursuant to the confession statement of the accused persons from Muthalagu Finance Pvt., Ltd., Karur and this jewel [M01] was pledged on 25.06.2014 in the said finance company by the second accused, who has also signed in the loan receipt and customer declaration copy marked as Exs.P9 & P10, respectively.

24. Autopsy on the deceased body was conducted by Dr.T.Sakthivel [PW25] and Dr.Sumathi. The postmortem was conducted on 24.06.2014 at 11.35 am and the Doctors have noted down four external injuries as follows:

- i) Perivaginal & vaginal blood stain present;
- ii) Bite marks present over both the breasts;
- iii) Multiple scratches and contusions of variable size present around the neck; and

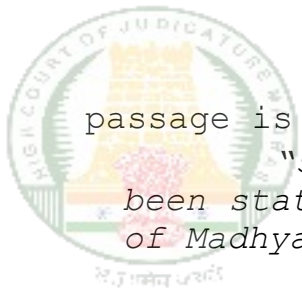
- iv) Abrasion of 3 x 2 cm present over the left elbow region.

The Doctors have issued the postmortem certificate, which was marked as Ex.P14, on 21.08.2014, that the deceased would appear to have died, 6 to 24 hours prior to Autopsy, of Asphyxia due to neck compression.

25. The Doctors have noted down multiple injuries and contusions of variable sizes around the neck of the deceased and that the death was due to Asphyxia. The Doctors have also noted down several bite marks over both the breasts as well as bloodstains on the perivaginal and vaginal parts of the deceased. Therefore, the prosecution has established that the death was due to Asphyxia due to neck compression. The presence of several bite marks over both the breasts of the deceased and the evidence of the Doctor [PW25] establish the case of the prosecution that the deceased was subjected to sexual assault prior to the occurrence and was also killed by strangulation.

26. The investigation officer has collected several material objects from the place of occurrence and in the Green Colour Salvar, which was recovered and marked as MO21 and in a Nylon tube, which was marked as MO5, bloodstains were noted. These material objects were sent for forensic analysis along with the sample bloods of the accused persons. Dr.Lakshmi Balasubramanian [PW38], Deputy Director, Forensic Science Department, Chennai, conducted the DNA Profiling and gave her opinion that the bloodstains found in MOs.5 & 21 are that of the deceased and the first accused. This evidence of the Scientific Expert and her report [Ex.P41] also substantiate the case of the prosecution as against this appellant / first accused.

27. While appreciating a case based on circumstantial evidence, we are required to bear in mind the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **Govinda Reddy vs. State of Mysore**, reported in **AIR 1960 SC 29** and the relevant



passage is extracted below:

"5.The mode of evaluating circumstantial evidence has been stated by this Court in Hanumant Govind Nargundkar v. State of Madhya Pradesh [AIR 1952 SC 343] and it is as follows:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

28. In **Padala Veera Reddy vs State of A.P.** reported in **1991 SCC Criminal 407**, the Hon'ble Supreme Court has laid down the test which has to be adopted in dealing with cases of circumstantial evidence and the same reads thus:

"15. ...in a case of circumstantial evidence such evidence must satisfy the following test:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

29. From the foregoing discussions and reasonings, we are of the view that the prosecution has established the following circumstances beyond any reasonable doubt:

i) The deceased Vinitha was aged about 16 years, just completed her School Education and was working in VKA Polymer Mosquito Net Company, Karur, belonging to PW10.

ii) On the date of occurrence, ie., on 23.06.2014, the deceased Vinitha attended duty at VKA Polymer Mosquito Net Company

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and returned to her house in her bicycle [M08].

iii) The accused waylaid her in a remote place near PW8's land; taken her inside the lands of PW8 in a knife point; sexually assaulted her; strangled her neck and killed her; and also taken away the gold stud [M01] worn by her at the time of occurrence.

iv) PW1, the father of the deceased searched for his daughter and on the information from one Anandan [PW5], went to the place of occurrence, found his daughter in a half naked position, lodged a complaint before the Mayanoor Police Station and the same was registered in Crime No.125 of 2014 under Section 302 IPC and Sections 5 & 6 of the POCSO Act.

v) On receipt of the information, the investigation officer [PW43] went to the place of occurrence and collected the material objects including the Nylon tube [M05] and a Salvar [M021] with bloodstains, from the place of occurrence.

vi) The appellant / first accused was in remand in connection with a case in Sinthamanipati Police Station Crime No.90 of 2014 and the Inspector of Police [PW39] has taken him in police custody for enquiry in the said case in Crime No.90 of 2014, where a Splendor Motorcycle was stolen. During the enquiry, the accused admitted the offence committed by him in Crime No.90 of 2014 as well as in Crime No.125 of 2014 on the file of the Mayanoor Police Station.

vii) On receipt of information from PW39, the investigation officer [PW43] made a requisition for formal arrest of this appellant / first accused in Crime No.125 of 2014 and accordingly, this accused was remanded on PT warrant in Crime No.125 of 2014 and thereafter, taken him on police custody and also recorded the confession statement. Pursuant to the confession statement, PW43 arrested the second accused, through whom, the appellant / first accused has pledged the stud [M01] of the deceased in a private finance company.

viii) The second accused gave a confession statement that this appellant / first accused gave the stud [M01] for pledging the same and to arrange some money. On his request, he pledged the stud [M01] in Muthalagu Finance Pvt., Ltd., Karur and the pledge receipt and customer declaration form were recovered from the residence of the second accused and marked as Ex.P9 & 10 respectively.

ix) The Doctor [PW25], who conducted the postmortem, gave his opinion that there were four external injuries on the deceased, such as several bite marks on both her breast and several scratch marks on her neck and finally gave his opinion that the death was due to compression of her neck.

x) PW15, a Milk Vendor, was examined by the investigation officer and PW15 has also supported the case of the prosecution that he witnessed the appellant / first accused coming from the lands of PW8 on the date of occurrence around 07.00 pm and he also questioned him, for which, the appellant / first accused has also replied that he came for the purpose of village festival.

xi) PW15 has identified the appellant / first accused in the identification parade conducted by the learned Judicial Magistrate



accused as well as after changing the dresses.

xii) Apart from the evidence of PW15, one Ilayaraja [PW14] has also witnessed the accused near the place of occurrence on the date of occurrence.

xiii) The occurrence took place on 23.06.2014 and immediately after the occurrence, the jewel [MO1] of the deceased has been pledged in Muthalagu Finance Pvt., Ltd., Karur, by the second accused on 25.06.2014.

xiv) The gold stud [MO1] as well as the receipt [Ex.P9] were recovered pursuant to the confession of the second accused and also placed before the Court. The stud [MO1] was identified by the father [PW1] as well as sister [PW2] of the deceased. PW6, the co-worker as well as a friend of the deceased, has also identified the stud [MO1].

30. The aforesaid circumstances clearly show that the deceased, a Minor girl aged about 16 years, while returning home in her bicycle, was waylaid and taken to a remote place, sexually assaulted and also killed by compressing her neck. The stud [MO1] was recovered pursuant to the confession statement of the second accused and this stud [MO1] has been identified by the father [PW1] and sister [PW2] of the deceased as well as a co-worker [PW6] of the deceased. The investigation agency has also collected the Salvar [MO21] and Nylon tube [MO5] with bloodstains and has also referred these material objects for scientific analysis and the Scientific Expert [PW38] gave her opinion in Ex.P41 that the DNA present in these material objects tally with the deceased as well as the first accused. The injuries found on the deceased and the bite marks found on her chest establish that she was sexually assaulted and also murdered for gain and the commission of offence by this accused is also established through the available evidence.

31. The circumstances projected by the prosecution establish a close link with each other and form a complete chain unerringly pointing to the guilt of the accused and as such, we not inclined to interfere with the conviction and sentence imposed by the trial Court. Accordingly, the conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Karur, in Spl.S.C.No.7 of 2015, dated 08.12.2016, are confirmed.

In the result, the Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1) The Sessions Judge,
Fast Track Mahila Court,
Karur.

2) The Deputy Superintendent of Police,
Kulithalai Sub Division,
Kulithalai,
Karur District.

3) The Superintendent of Central Prison,
Cudalore.

4) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Record Keeper / Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.SARAVANAN, Advocate (SR-104024[F] dated 09/12/2019)

Crl.A.(MD)No.220 of 2018
05.12.2019

KB(24.08.2020) 14P 8C