

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 05.11.2019

JUDGMENT DELIVERED ON : 10.01.2020

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

and

THE HON'BLE Mr. JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.58 of 2018

Ibrahim

.. Appellant/A.1

... Vs ...

State Rep. by
Inspector of Police,
Tirupur Rural Police Station,
Tirupur District.
(Crime No.4466 of 2011)

..Respondent/Complainant

Appeal filed under Section 374 (2) of Cr.P.C. against the judgment dated 30.09.2013 passed by the learned I Additional District and Sessions Judge, Tirupur, in S.C.No.77 of 2012.

For Appellant .. Mr.T.R.Ravi

For Respondent .. Mr.K.Prabhakar,
Additional Public Prosecutor

JUDGMENT

RMT.TEEKAA RAMAN, J.

The appellant namely, Mr.Ibrahim is the first Accused in S.C.No.77 of 2012 on the file of the learned I Additional District and Sessions Judge, Tirupur. The second accused namely, Sumaiya, is the wife of the first accused. Both the accused stood charged for the offences under Sections 365, 302 and 392 of IPC. By judgment dated 30.09.2013, the trial Court convicted both A.1 and A.2 under all three charges and sentenced them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for one year for the offence under Section 365 of IPC; to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for one year for the offence under Section 392 of IPC; and to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for one year

for the offence under Section 302 of IPC. Challenging the above said convictions and sentences, A.1 has preferred the present criminal appeal before this Court.

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

2.1. On 06.11.2011 at about 12.00 noon, a man and a woman came in a motor cycle bearing Registration No.TN-39-V-7165. The woman was in parda. [The said man and the woman have been later on identified as A.1 and A.2]. A.1 inquired with P.W.1 as to where the deceased was. A.1 disclosed his name as "Ibrahim" and his wife accompanying him as "Sumaiya". When P.W.1 responded, A.1 told him that they had come to take the deceased to their house to put make-up for a friend of A.2. P.W.1 told that the deceased had gone else where and it would take some time for her to return. Therefore, both A.1 and A.2 left in the same motorcycle. Within an hour and a half thereafter, both A.1 and A.2 returned in the same motor cycle. This time, the deceased had already come. They spoke to the deceased and took her with them. A.1 and A.2 proceeded in their motor cycle followed by the deceased in her motor cycle bearing Registration No.TN-29- AD-4515. When the deceased left, she was wearing a gold thali chain with thali and a gold chain and also a pair of ear studs. She was also having her mobile phone.

2.2. Within forty-five minutes to one hour thereafter, from the mobile phone of the deceased a call came to the mobile phone of P.W.1, who is the father of the deceased. He picked up his mobile phone and responded to the call. He heard a male voice from the other end. At that time, the person from the other end [Later on identified as P.W.2] told that the mobile phone was held by a woman who was lying with injuries and she was trying to contact the mobile number of P.W.1. He further told that he took up the mobile phone and he found that outgoing call was in progress. He further told that the woman was lying at V.S.A. Nagar in front of the house of A.1 in a serious condition with cut injuries all over her body. P.Ws.1 and 3 immediately rushed to the said place. Since they were not aware of the place of occurrence, by making inquiry, with great difficulty, at last, they reached V.S.A. Nagar and then the place of occurrence. They found the deceased lying just at the entrance of the house of A.1 with cut injuries. Her two fingers had been severed and they were not seen. Immediately, P.Ws.1 and 3 contacted "108 Ambulance service" and with the help of the Ambulance, they took the deceased to Tirupur Government Hospital where the Doctor, on examining the deceased, declared her dead.

2.3. Thereafter, P.W.1 went to Tirupur Rural Police Station and made a complaint. P.W.15, the Special Sub Inspector of

Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.4466 of 2011 under Sections 365, 392 and 302 of IPC at 06.30 p.m. Ex.P.10 is the FIR. He forwarded both Ex.P.1-complaint and Ex.P.10-FIR to the Court which were received by the jurisdictional Magistrate at 08.00 p.m. on 06.11.2011. In the mean time, P.W.15 handed over the case diary to the Inspector of Police for investigation.

2.4. The case was taken up for investigation by P.W.18. He went to the place of occurrence at 07.00 p.m. on 06.11.2011 and in the presence of P.W.9 and P.W.19, he prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.15) at the place of occurrence. The motor cycle belonged to the deceased was found just in front of the house of A.1. In the bed room and the other places of the house of A.1, blood stains were found. Two severed fingers of the deceased were found in the bed room. The belongings of the deceased were also found inside the house. He recovered all the above material objects from the house including the bloodstained tiles and ordinary tiles and the motor cycle which was found parked just in front of the house of A.1, in the presence of the same witnesses under a mahazar (Ex.P.3). Then, he conducted inquest on the body of the deceased at the hospital in the presence of the panchayatars between 09.00 p.m. and 12.00 midnight on 06.11.2011 at Tirupur Government Hospital and prepared an Inquest Report (Ex.P.16). Thereafter, he forwarded the body for post-mortem.

2.5. P.W.12-Dr.Suganyadevi, an Assistant Surgeon, at Government Head Quarters Hospital, Tirupur, conducted autopsy on the body of the deceased at 10.45 a.m. on 07.11.2011 and found the following injuries on the body of the deceased:-

"External Injuries:

(1) Well defined Linear cut injury over front of the neck seen which is about 7 cms from chin, 10 cms from left ear lobe, 10 cms from right ear lobe measuring 5 x 3 x 3 cm exposing cut ends of blood vessels and the trachea partially cut ends seen.

(2) 1 cm lateral to injury No.1 on left side, a cut injury of about 1.5 x 0.5 x 1 cm seen with regular margins and sharp edges.

(3) Well defined cut injury 5 x 1 x 2 cms seen over right side of neck which is 5 cms below right ear lobe with the medial end of the injury having the depth of 3 cms exposing blood vessels cut ends.

(4) Well defined cut injury over middle of right cheek 6 x 3 x 1 cms with the medial end of the injury having the depth of 2 cms exposing muscles and blood vessels cut ends and darkish red clots seen around the injury.

(5) Well defined cut injury in the lower occipital region which extends up to right ear lobe about 7 x 2 x 1 cms exposing skull bone and darkish red dots seen around the injury.

(6) Well defined cut injury over right temporal region 6 x 2 x 1 cms and 2 cms below injury No.6, 4 x 1 x 1 cm cut injury seen.

(7) Abrasion injury 9 x 2 cms seen over right shoulder joint and abrasion injury 2 x 2 cm below injury No.3 seen.

(8) 1/3 rd of right middle finger and 2/3rd of right index finger amputated cut injury over right hand dorsum 5 x 1/2 x 1/2 cm seen. cut injury over right hand dorsal aspect 3 x 1/2 x 1/2 cm seen.

(9) Cut injury over middle third of all the fingers except thumb on left side 1 x 1/2 x 1/4 cm seen. Cut injury over right thumb 1 x 1/2 x 1/4 cm seen.

All injuries are antemortem in nature.

Eyelids partially opened. Mouth and Lips partially opened. Tongue kept inside the mouth. Ears - No discharge. Nose - No discharge. Opening of Thorax: Ribs - intact. Heart wt: 300 grams Chambers - Empty. Lungs pale. Right wt. 400 grams and left 350 grams. Hyoid bone - Intact. Stomach contains 100 ml of partially digested food particles. Liver pale, wt. 1400 grams. Spleen pale wt. 110 grams. Kidneys: each wt. 150 grams. Intestines - distended with gas. Bladder - Empty. Uterus Normal in size. Genedictive organs normal. External genitalia appears normal. Opening of the Head: Fracture of Occipital Bone seen. Membranes intact. Brain - Pale wt. 1400 grams."

She persevered the visceral organs of the deceased for chemical analysis. Ex.P.8 is the Post-mortem Certificate. After having received the chemical analysis report, she opined that the death was due to shock and hemorrhage due to multiple injuries to vital organs namely, trachea and major blood vessels. She further opined that the injuries noticed on the

body of the deceased could have been caused by a weapon like Aruval (M.O.11). Ex.P.9 is her final opinion regarding the cause for the death.

2.6. After the postmortem was over, P.W.18, the Investigating Officer, recovered the bloodstained clothes from the body of the deceased. P.W.18 examined few more witnesses and recorded their statements.

2.7. In the course of investigation, on 07.11.2011 at 12.00 noon at Kangeyam - Tirupur Road at Rakkipalayam branch road, P.W.18 arrested A.1 and A.2 together in the presence of P.W.10 and P.W.20. On such arrest, A.1 gave a voluntary confession, in which, he disclosed the place where he had hidden the motor cycle, gold jewels, bloodstained clothes and Aruval. A.2 also gave a voluntary confession, but no fact was discovered from out of the same. In pursuance of his confession, A.1 took P.W.18 and the witnesses to the house of his sister Mrs.Ayisha at K.N.S. Subramaniam Nagar, Tirupur and produced the motor cycle bearing Registration No.TN-39-V-7165 (M.O.1), gold Thali chain (M.O.3), gold chain (M.O.4), a pair of gold ear stud (M.O.5), Aruval (M.O.11), blood stained shirt (M.O.12) and blood stained pants (M.O.13). On returning to the police station, he forwarded both the accused to the Court for judicial remand. He also forwarded the material objects to the Court with a request for chemical analysis. On completing the investigation, he laid the final report against both the accused.

2.8. Based on the above materials, the trial Court framed as many as three charges as detailed in the first paragraph of this judgment. Both A.1 and A.2 denied the same. In order to prove the same, on the side of the prosecution, as many as 20 witnesses were examined, 17 documents were marked and 14 materials objects were produced.

2.9. Out of the said witnesses, P.Ws.1 and 3 are the father and mother respectively of the deceased. They have stated about the inquiries made by A.1 and A.2 about the deceased at their house and the deceased leaving in her motor cycle lastly along with A.1 and A.2, who left in their motor cycle. They have further stated that they have received a phone call from the mobile phone of the deceased at about 01.00 p.m. P.W.2 spoke over phone and when they reached the place of occurrence, they found the deceased lying with cut injuries and the jewels worn by her were found missing. P.Ws.1 and 3 took the deceased with the help of 108 Ambulance service to Tirupur Government Hospital where the deceased was declared dead by a Doctor.

2.10. Thereafter, according to P.Ws.1 and 3, P.W.1 went to the police station and preferred a complaint. They have identified M.Os.2, 3, 4, 5 6, 7 and 8 belonged to the deceased.

P.W.2 is an important witness for the prosecution. He has stated that when he was passing through the place of occurrence, he found the deceased lying at the entrance of the house of A.1 and the deceased was trying to contact somebody through her mobile phone. When the deceased was struggling, with a view to help her, P.W.2 took the mobile phone of the deceased and found that an outgoing call was in progress. According to P.W.2, when he enquired, P.W.1, who was on the other end, responded to the said call. P.W.2 has further stated that he told P.W.1 that the deceased was lying with cut injuries at V.S.A. Nagar, Tirupur and he also told him that the deceased was struggling to contact through her mobile bone and with a view to help the deceased, he took the mobile phone and found that the call was in progress. On receiving the intimation, P.Ws.1 and 3 rushed to the place of occurrence. Then, with the help of the people, the deceased was taken in "108 Ambulance service" to Tirupur Government Hospital.

2.11. P.W.4 is the neighbour of P.W.1. He has also stated about the arrival of the accused to the house of P.W.1 inquiring about the deceased and later taking her in her motorcycle. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 is the landlord of the house where A.1 and A.2 were residing as husband and wife. According to him, on the day of occurrence, he was elsewhere busy with his work. He received an information that there had occurred an incident at his house rented out to the accused. When he rushed to the place of occurrence, he found blood stains inside the house, but the deceased had already been taken to the hospital. P.W.7 has stated that on 06.11.2012, there was a function at his house in connection with his daughter attaining puberty. The deceased was there at his house between 10.45 a.m. and 11.45 a.m. putting make-up to the girl. Thereafter, even without taking food at his house, she left informing P.W.7 at 11.45 p.m. that she had work elsewhere. P.W.8 is the landlord of the house where the sister of A.1 was residing as a tenant. He has stated that often he had seen both A.1 and A.2 visiting the house of Mrs.Ayisha. He has stated that Mrs.Ayisha told him on few occasions that A.1 was in dire need of money for treatment.

2.12. P.W.9 and P.W.19 have spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence and the recovery of material objects. P.W.10 and P.W.20 have spoken about the arrest of A.1 and A.2 and the consequential recovery of the material objects based on the disclosure statement of A1. P.W.11 has turned hostile and he has not supported the case of the prosecution in any manner.

2.13. P.W.12-Doctor has spoken about the autopsy conducted on the body of the deceased and her final opinion regarding the

cause of death. P.W.13, the Police Constable, has stated that he received the intimation from Tirupur Government Hospital at 02.30 p.m. on 06.11.2011 about the death of the deceased. He informed the same to his superiors. P.W.14 has stated that he took the dead body of the deceased and handed over the same to the Doctor at Tirupur Government Hospital, for post-mortem.

2.14. P.W.15, the then Special Sub-Inspector of Police, has stated about the registration of the FIR based on the complaint made by P.W.1 at 06.30 p.m. on 06.11.2011. P.W.16 was the Duty Doctor at Revathy Hospital, Tirupur. According to him, at 03.00 p.m. on 06.11.2011 the deceased was brought before him for treatment and he advised her to be taken to the Government Hospital. P.W.17 has stated that at 02.10 p.m. on 06.11.2011 when he was in the Tirupur Government Hospital, the deceased was brought before him by her father. He examined the deceased and found a number of cut injuries on her body. He declared the deceased dead. P.W.18 has spoken about the entire investigation done by him and the filing of final report against the accused.

2.15. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, they denied the same. However, they did not choose to examine any witness on their side nor did they mark any document. Their defence was a total denial.

2.16. The trial Court, on consideration of both oral and documentary evidence, convicted both the accused under Sections 365, 392 and 302 of IPC and accordingly sentenced them to undergo imprisonment as detailed in the first paragraph of this judgment.

3. The second accused, who is the wife of the first accused, had preferred an appeal in CrI.A.No.682 of 2013 and by a judgment dated 08.06.2016, a Division Bench of this Court has allowed the said appeal and acquitted A.2 for the reasons discussed in the said judgment.

4. We had the benefit of going through the judgment rendered by our brother Judges in the Division Bench. After the disposal of the criminal appeal preferred by the second accused, it appears that the first accused had preferred the present criminal appeal before us.

5. We have heard the learned counsel for the appellant/A.1 and the learned Additional Public Prosecutor appearing for the respondent/State and also perused the records carefully.

6. Mr.T.R.Ravi, learned counsel for the appellant/A.1 would submit that somebody has committed homicidal violence on the

body of the deceased Angaiyarkanni and dropped the body in front of the gate of the house of the appellant/A.1. He has also relied upon the judgment of acquittal passed in respect of the co-accused in the very same case.

7. Mr.K.Prabhakar, learned Additional Public Prosecutor appearing for the State vehemently opposing the contentions of the learned counsel for the appellant would submit that the prosecution has proved its case beyond reasonable doubt as to the factum of scene of the crime in the bed room of the house of the first accused and the victim Angaiyarkanni was struggling for her life with her fingers cut and cut in the trachea, she has gasping for the breath and the entire stretch leading from the bed room to the compound gate had the bloodstain mark which are been proved by the evidence in the manner known to law and hence, as per Section 106 of the Indian Evidence Act, it is for the appellant/A.1 to explain as to what had happened inside the house, since the same lies within the special knowledge of the appellant/A.1.

8. In order to substantiate that it was the appellant/A.1, who had committed the crime of murder, the prosecution had no direct evidence to offer. Hence, a necessity arose for the prosecution to rest its case on the circumstantial evidence. In a case like this where the prosecution rests its case exclusively on the circumstantial evidence, the circumstances so placed must be pointing to the hypotheses, except the accused no one could have committed the offence.

9. The prosecution relied strongly on two circumstances, which are accepted by the trial Court. Firstly, last seen theory, for which, the witnesses P.W.1, P.W.3 and P.W.4 were examined. Secondly, the added circumstances is the recovery of material objects, for which, the prosecution relied on the evidence of P.W.1, P.W.2 and P.W.3 along with P.W.6.

10. The Hon'ble Apex Court has held in respect of circumstantial evidence in the case of Krishnan V. State represented by Inspector of Police reported in 2008 (4) Supreme 25 that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests :-

- i. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established ;
- ii. those circumstances should be of definite tendency unerringly pointing towards guilt of the accused ;
- iii. 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

iv. 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.

11. If we scrutinize the materials available on record coupled with the reasons assigned by the learned trial Judge in the light of the above principle of law as well as the settled principle of law regarding the reliability of circumstantial evidence, we are constrained to state that there is absolutely no infirmity or illegality in the impugned Judgment of conviction passed by the learned trial Judge.

12. With the above legal position governing the subject matter when the prosecution is trying to prove the charges on the circumstantial evidence let us examine the evidence available on record.

13. As stated supra, the case of the prosecution is that the alleged occurrence is said to have taken place on 06.11.2011 at about 12.30 p.m., in front of the house of A.1 at V.S.A. Nagar, Tirupur. The name of the deceased is Mrs. Angayarkanni. P.Ws.1 and 2 are the father and mother of the deceased respectively. P.W.2 is the person who informed P.W.1 through a cell phone about the injuries sustained by the deceased. It is the further case of the prosecution that on 06.11.2011 at about 12.00 noon, a man and a woman came in a motor cycle and enquired with P.W.1 and they told him that they want to take the deceased to their house to put up the make-up for a friend of A.2. At that time, it was told by P.W.1 that she had gone some where else. Therefore, both A.1 and A.2 left the place and returned back after some time. This time the deceased was already available in the house and they have spoken with the deceased and A.1 and A.2 proceeded in their motorcycle and they were followed by the deceased in her motorcycle separately. After some time, P.W.1 received a phone call made by P.W.2 informing him that the deceased sustained injuries and fell down.

13.1. P.Ws.1 and 3 went to the place of occurrence and took the deceased to a private hospital and then to Government Hospital at Tirupur where she was declared dead by the Doctor. P.W.1 went to the respondent police station and gave a complaint under Ex.P.1. Ex.P.10 is the FIR registered by P.W.5, Special Sub-Inspector of Police. After completing the investigation,

P.W.18 has filed a charge sheet as against A.1 and A.2 for the offences under Sections 364, 392 and 302 IPC.

14. On perusal of the evidence of P.W.1, P.W.3 and P.W.4, it is seen that the appellant herein/first accused along with his wife came in a motorcycle to the house of the deceased to engage her for putting make-up for a friend of A.2 in connection with the function in their home and at that time, the first accused had introduced himself by his name and after 1 1/2 hours, when the deceased returned back from the previous engagement of work in connection with a puberty function to do the make-up for a girl who attained puberty, the deceased went along with the accused in a separate vehicle and thus, P.W.1, P.W.3 and P.W.4 have seen the deceased leaving the house of P.W.1 in the company of the first accused/appellant herein.

15. The evidence of P.W.2-Nowsath is to the effect that he is neighbour of a place where the deceased was lying viz., in front of the gate of the house of the first accused; the deceased suffered multiple injuries both in the neck and also entire body; when she was trying to contact a person from her cell phone, P.W.2 came there to rescue her and at that time, the outgoing call was in progress which was picked up by P.W.1 and P.W.2 had conveyed the location to P.W.1 so as to enable P.W.1 and P.W.3 to reach the spot. There is nothing in the cross-examination to discredit this part of the evidence from where the deceased was picked up and sent to the Government Hospital thereon to the higher specialty hospital where she was declared as brought dead. P.W.2 has spoken that the house door of the first accused found to be opened.

16. It is seen from the post-mortem report-Ex.P.8 that the deceased has suffered multiple injuries over entire her body which demonstrate that she was having fight with the assailant for her life.

17. The place where the victim was found at a critically injured-state, as seen by P.W.2 is the gate of the house of the appellant/A.1. The landlord of the house where the appellant/A.1 was tenant was examined as P.W.6-Kadhar Hussain @ Muhammad Hussain, who could clearly depose about the tenancy arrangement between the parties and A.1 is residing in the said house on rent. In the cross-examination, P.W.6 had categorically stated that on the date of the incident, he visited the house along with the officials and the police and he has seen bloodstain in the bed room as well as on the outer area and corridor of the house leading to the gate of the house.

18. Furthermore, P.W.9, one of the attester of the observation mahazar-Ex.P.2 and seizure mahazar-Ex.P.3, had clearly deposed regarding the presence of cosmetic materials that are used for make-up and also deposed regarding the seizure of artificial hair, a pair of lady cheppals, broken fingers with bloodstained, bloodstained tiles and normal tiles and bloodstained cell phone from the scene of the crime viz., bed room of the house of the appellant/A.1 and also a scooty from the gate. So is the evidence of P.W.19, another attester of the observation mahazar-Ex.P.2 and seizure mahazar-Ex.P.3.

19. In the cross-examination, P.W.9 and P.W.19 have clearly described the scene of the crime as noted in the observation mahazar. Besides, P.W.19 has clearly deposed the presence of the bloodstain in the bed room and veranda and a bloodstained cell phone near the gate of the house, the factum of presence of bloodstain in all these places are vividly described by him in the cross-examination. He also stated that in the corridor, there was a bloodstain and a cell phone was seized from the place of occurrence and there was bloodstain both inside the house and also on the outside viz., corridor leading to the gate and these version of P.W.9 and P.W.19 are duly corroborated by the evidence of independent witnesses P.W.6 [owner of the house]. P.W.9 and P.W.19, who stood the regress cross-examination, have made mutually consistent and mutually corroborating the evidence to vivid the scene of the crime and preparation of Exs.P.2 and P.3 by the police officials on the very same day. Besides, the version of these four private prosecution witnesses P.W.2, P.W.6, P.W.9 and P.W.19 remains unchallenged in the cross-examination. In other words, while P.W.6, P.W.9 and P.W.19 have deposed regarding the presence of those materials as discussed supra from the bed room of the house, near the door and veranda leading to the gateway, P.W.12 deposed regarding the place where the victim was first found by him with multiple injuries near the house gate of the appellant herein/A.1. In the absence of anything in the cross-examination to discredit their evidence and their version regarding the material particulars being remained unchallenged in the cross-examination, we are of the considered view that the scene of the crime as projected by the prosecution has been duly proved in the manner known to law.

Homicide:-

20. From the combined reading of the documents Exs.P.8, P.12 and P.13 coupled with the evidence of Post-mortem Doctor P.W.12-Suganya Devi, we find that the victim Angaiyarkanni, who is the daughter of P.W.1-Kathiresan and P.W.3-Navaneetham, died due to the homicidal violence due to the injuries sustained on

her body and found laying near the house gate of the appellant/A.1.

Crime :-

21. From the discussion in the preceding paragraphs, as per the version of the private prosecution witness P.W.2, we find that the deceased was fighting for her life after she was found with multiple injuries, which are grievous in nature, near the gate of the house of the appellant/A.1 and subsequently was declared dead. Further, from the oral evidence of P.W.12-Dr.Suganya Devi, who conducted post-mortem on the body of the deceased, coupled with the documentary evidence of Post-mortem Certificate-Ex.P.8, it is seen that the victim's fingers were found to be cut. Further, from the oral evidence of P.W.8, attester of the observation mahazar and documentary evidence of Exs.P.2 and P.3, the bloodstained broken fingers along with cosmetic materials belongs to the deceased were recovered from the bed room of the house of the appellant/A.1. The bloodstain was also seen there from the bed room and corridor leading to the gate and outside the house where the victim was found with multiple injuries by P.W.2. Besides, the tenancy between P.W.6 and the first accused has not been challenged in the cross-examination and thus, we find that the victim was found by P.W.2 with multiple injuries fighting for her life near the gate of the house of P.W.6 and the first accused was residing in that house as tenant and the victim was found with her fingers cut near the gate of the appellant/A.1 and the broken fingers were found in the bed room of the house of the first accused and continuous bloodstain indicates ooze of the blood from the bed room to the corridor and corridor to the outside the gate of the first accused where the victim was found with multiple injuries and the said facts have been clearly demonstrated by the versions of the private prosecution witnesses and thus, as per Section 106 of the Indian Evidence Act, it is within the special knowledge of the appellant/A.1 to explain as to what had happened inside the house.

22. For the reasons best known, no plausible explanation much less any explanation was offered by the appellant/A.1 during the questioning under Section 313 of Cr.P.C. and the first accused had taken a plea that somebody has caused the injury on the body of the deceased Angaiyarkanni and placed her in front of his house. However, the incriminating evidence are remained unchallenged in the cross-examination viz., the evidence of P.W.9 and P.W.2, who are independent witnesses and who have no grudge to grind against the appellant/A.1 as to the presence of the injured human organ viz., bloodstained cut fingers inside the bed room of the appellant/A.1 and the

bloodstained materials that belonged to the deceased were recovered under Ex.P.3-seizure mahzar. In the absence of any explanation as to how it has happened inside the house of appellant/A.1, we are of the considered view that the appellant/A.1 has not discharged the onus of proof as required under Section 106 of the Indian Evidence Act.

23. When the prosecution has let in reliable evidence by way of independent witnesses regarding the scene of the crime by virtue of Section 106 of the Indian Evidence Act, the onus of proof has to be discharged by the appellant/A.1 by letting in evidence or explaining as to how the incident has happened inside the bed room of his house or explaining the reason for the presence of those material objects in his bed room. In the absence of any explanation or any answer being elicited during the cross-examination of the prosecution witnesses, we are of the considered view that the appellant/A.1 has miserably failed to discharge the onus of proof, as required under Section 106 of the Indian Evidence Act. The plea raised by the appellant/A.1 that somebody had caused injuries on the body of the victim Angaiyarkanni and placed her in front of his house is held to be only a ruse to find an excuse, as he failed to explain the incriminating materials seized from his house as spoken to by the independent private prosecution witnesses and hence, the prime contention raised by the learned counsel for the appellant/A.1 cannot be countenanced as to the innocence of the appellant/A.1. The added circumstances is relating to recovery of jewels of the victim from the house of the sister of the appellant/A.1.

24. With regard to the seizure, it is to be stated that the owner of the house where the sister of the appellant/A.1 was residing was examined as P.W.8, who could depose about the tenancy of the house to the sister of the appellant/A.1, who is in the seventh month of pregnancy at the relevant point of time. The pregnancy at the relevant point of time and financial constrain undergone by the appellant/A.1 were spoken to by the independent witness viz., the owner of the house of the sister of the appellant/A.1 also assumes significance on the background of the case.

25. Based upon Ex.P.4, the admissible portion of the confession statement of the appellant/A.1, M.Os.3, 4 and 5, golden jewels of the deceased were recovered from the house of the sister of the appellant/A.1 and the seizure mahazar was marked as Ex.P.6 as spoken to by the attesor of the seizure mahazar witness P.W.20-Sivakumar.

26. At this juncture, it remains to be stated that P.W.1 and P.W.3, parents of the deceased have categorically deposed

that at the time of the deceased leaving their house along with the first accused in a separate vehicle, she wore the golden jewels. It is also a clear evidence of P.W.2, (who found the deceased with multiple injuries near the gate of the house of the first accused), that he had not seen any golden jewels on the body of the victim Angaiyarkanni. So also the inquest report-Ex.P.16 and the said jewels have been seized and recovered based upon the admissible portion of the confession statement given by the appellant/A.1 under Ex.P.4. In other words, based upon Ex.P.4, admissible portion, which has led to recovery of fact viz., recovery of golden jewels M.O.3, M.O.4 and M.O.5 from the house of the sister of the appellant/A.1 which was duly attested by P.W.20-Sivakumar, independent witness and M.O.3, M.O.4 and M.O.5 were seized under Ex.P.6-seizure mahazar and those properties have been clearly identified by P.W.1 and P.W.3 during the trial.

27. Thus, we find that the golden jewels worn by the deceased Angaiyarkanni at the time when she left the parental home were recovered from the house of the sister of the appellant/A.1 is been proved in the manner known to law.

28. Besides, the material objects M.Os.11, 12 and 13, weapon of the crime and the dress of the accused were also recovered from the house of the sister of the appellant/A.1 also lends credence to the prosecution theory and hence, in the absence of any contradiction between the prosecution witnesses or any inconsistency between the prosecution witnesses, we are of the considered view that the prosecution has led in positive evidence which were duly corroborated with each other. Based upon the confession statement leading to the discovery of a new fact namely, the jewels worn by the deceased Angaiyarkanni at the time when she left her parental home besides weapon of the crime was also seized from the house of the sister of the accused and hence, we are of the considered view that the next chain of the link in the prosecution theory has also been proved in the manner known to law.

29. A similar finding arrived at by the Trial Court does not suffer from any irregularity or illegality warranting interference at the appellate stage and thus, we find that the prosecution has successfully demonstrated the following chain of events of facts viz.,

(1) P.W.7-Natarajan hired the services of the deceased Angaiyarkannai to do the make-up for his daughter and the deceased Angaiyarkannai was attended the function.

(2) At that time, the appellant herein/A.1 went to the house of the deceased and enquired about her for engaging her services as a beautician for a private function in his house.

(3) The deceased returned to the parents' house, after completing the job at the house of P.W.7.

(4) Again, A.1 came to the house of P.W.1, picked her up and while A.1 and A.2 left the house of the deceased, the deceased has followed them in her scooty separately.

(5) The deceased was last seen alive by P.Ws.1, 3 and 4 in the company of the appellant herein/A.1.

(6) After 1 1/2 hours, from the scene of the crime, P.W.2 had called P.Ws.1 and 3 about the serious condition of the deceased, who was found laying in front of the gate of the house of the appellant/A.1.

(7) P.W.6 is the owner of the house where the appellant/A.1 was residing as a tenant.

(8) Inside the house of the appellant/A.1, broken fingers, bloodstained cell phone of the deceased, her cosmetic materials and personal belongings were recovered on the very same day within few hours.

(9) The deceased went along with the appellant/A.1 in a separate scooty and at that time, she was wearing jewels worth about seven sovereigns [P.W.1, P.W.3 and P.W.4].

(10) The deceased was found to be lying on the road near the entrance of the house of the appellant/A.1 with cut injuries and no jewels have been found in her body [P.W.1, P.W.2 and P.W.3].

(11) P.W.8 is the owner of the house where sister of the appellant/A.1 is residing as a tenant.

(12) Based upon the admissible portion of the confession statement of the appellant/A.1 given under Ex.P.4, [M.Os.3, 4 and 5] [golden Thali chain, golden chain and a pair of golden ear rings] were recovered from the house of the sister of the appellant/A.1 (under Ex.P.3).

(13) Based upon Ex.P.4, admissible portion of the confession statement, M.O.11-Aruval, M.O.12-bloodstained shirt and M.O.13-bloodstained pant, have been recovered from the house of the sister of the appellant/A.1 in the presence of the independent witnesses under seizure mahazar Ex.P.6.

30. Thus, from the above set of circumstances coupled with the non-explanation by the appellant/A.1 as to how the material objects and part of the human body of the victim was found inside the bed room of the house of the appellant/A.1, the trial Court has rightly come to the conclusion that the appellant/A.1

has not discharged the onus of proof on his shoulder. Furthermore, from the recovery of golden jewels belonged to the victim from the house of the sister of the appellant/A.1, the trial Court has rightly come to the conclusion that the prosecution has proved its theory both on the last seen theory and recovery of material objects relating to the victim and has rightly held that the charges against the appellant/A.1 are proved beyond reasonable doubt in the manner known to law. Such a finding of the trial Court as against the appellant/A.1 is well considered and well merited and it does not warrant any interference by us at this appellate stage.

31. In the result, this Criminal Appeal is dismissed and the conviction and sentence imposed on the appellant/first accused in C.C.No.77 of 2012 by the learned I Additional District and Sessions Judge, Tirupur, Tirupur District, are confirmed.

Sd/-
Assistant Registrar(C.O.)

/True copy/

Sub Assistant Registrar

To

1. The I Additional District and Sessions Judge,
Tirupur.
2. The Inspector of Police,
Tirupur Rural Police Station,
Tirupur District.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison, Trichy.

+1 cc to M/s.T.R.Ravi, Advocate Sr.No. 3022

AKM/28.02.2020/16P- 6C /

JUDGMENT IN
CRL.A.No.58 of 2018