



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

**Reserved on : 13.12.2019**

**Delivered on : 21.02.2020**

**CORAM:**

**THE HONOURABLE MR.JUSTICE T.RAJA**

**and**

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**Crl. A. (MD)No.96 of 2018**

State represented by:

The Public Prosecutor,  
High Court, Madras - 600 104,  
Boiler Plant Police Station,  
(Crime No.61/2011)

... Appellant/Complainant

Vs.

1.Murali  
2.Karthi

... Respondents/A1 and A2

Prayer: Criminal Appeal filed under Section 378(1)(b) of the Criminal Procedure Code, praying to set aside the Judgment of acquittal passed in S.C.No.51 of 2012, dated 08.07.2015, by the learned III Additional District and Sessions Judge, Tiruchirapalli and convict the respondents/accused (A1 and A2) as charged in accordance with law.

For appellant : Mr.K.K.Ramakrishnan  
Additional Public Prosecutor

For Respondent : Mr.S.Muthumalai Raja

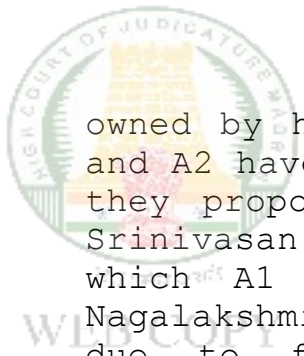
**J U D G M E N T**

(Judgment of the Court was delivered by **T.RAJA, J.**)

This Criminal Appeal is directed against the Judgment of acquittal dated 08.07.2015, made in S.C.No.51 of 2012, on the file of the III Additional Sessions Judge, Tiruchirappalli.

2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

2.1. It is the case of the prosecution that A1 and A2 are friends. A1 is working as a driver in a Travel Agency, which is



owned by his sister's husband. A2 has no permanent job. Both A1 and A2 have decided to earn money by illegal means and out of that they proposed to purchase a car to A1 and an auto to A2. One Srinivasan often used to hire the car from the Travel Agency, in which A1 was working as a driver, to go his mother-in-law Nagalakshmi's house at BHEL quarters, Tiruchirappalli. Hence, A1 due to frequent visit became well known to the deceased Nagalakshmi, taking advantage thereof, on 02.07.2011, A1 and A2 went to BHEL quarters, to watch Nagalakshmi's house with an intention to commit robbery. On 07.07.2011, both the accused came to the house of Nagalakshmi and since A1 was already known to Nagalakshmi, she invited them and gave them tea. At that time both the accused with an intention to rob the jewels, came behind her, forcibly laid down her horizontally by pressing her neck. A1 with his legs compressed on her stomach, and also strangulated her neck. A2 closed her nose and mouth with his hands and due to asphyxia, she died. Then the accused robbed the jewels and money from her house and also robbed the jewels worn by her. Thereafter, both A1 and A2 in order to destroy the evidence poured Seekaikai Powder on the dead body of Nagalakshmi and then locked the door and went away.

2.2.The prosecution further states that on 07.07.2011 at about 12.00 p.m., P.W.1 - Nagaraj, son of the deceased, who is employed as a store keeper in BHEL, came to the house and having found that the door was locked, he went and brought his wife P.W.2 - Ezhilmathi, who is working as a teacher at BHEL and with the key available from her, P.W.1, opened the door and found that his mother was in an unconscious stage and the jewels and cash were missing. He immediately, took her mother to the hospital at BHEL in an ambulance, where P.W.6 - Dr.Chitradevi examined his mother Nagalakshmi and reported that she had died.

2.3Then P.W.1 went to Boiler Plant Police Station and lodged a complaint under Ex.P1, based on which, P.W.11 - Ramamoorthy, Sub-Inspector of Police has registered a case in Crime No.61 of 2011 under Sections 380 and 302 I.P.C. on 07.07.2011 at about 14.00 hours. The printed F.I.R. was marked as Ex.P2.

2.4.P.W.11 despatched the original F.I.R. and original complaint to the Court of jurisdictional Magistrate and copy of the same to the higher officials. One Chellamuthu, Inspector of Police, Boiler Plant Police Station, took up the case for investigation and went to the occurrence place, prepared Ex.P.2 - Observation Mahazar and Ex.P.22 - rough sketch and recovered M.O.1 - Seegaikkai powder scattered in the varandah under a cover of Mahazar Ex.P.3. He went to the Government Hospital, Trichy and conducted inquest over the body of the deceased and prepared Ex.P.23 - Inquest report. Thereafter, he sent the body for conducting postmortem through P.W.12 - Vincent, Head Constable.



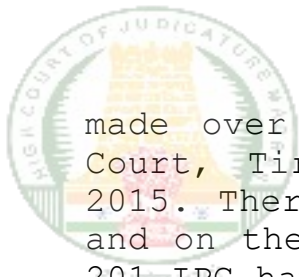
2.5. P.W.10 - Dr.Ravikumar, was a Professor in K.A.P.Viswanathan Government Medical College Hospital, Trichy, who conducted postmortem on 08.07.2011 at 11.10 a.m. The postmortem report is marked as Ex.P.17. He opined that the deceased died of compression of neck and head injury. The Final Opinion is marked as Ex.P.19. The Viscera Report is marked as Ex.P.18.

2.6. Then Chellamuthu, Inspector of Police examined P.W.1 - S.Nagarajan, P.W.2 - Ezhilmathi, P.W.3 - Rajeshwari, Ramamurthy, Ramadoss, P.W.4 - M.Sankar, Rajamanickam, P.W.5 - Chinnadurai, P.W.6 - Dr.M.Chitra Devi, Saravanakumar and Ganesan and recorded their statements. On 09.07.2011, he recorded the finger prints of Pandiammal, Sriram, Arthi, Annadurai, Ramamurthy, Janaki, Rajeswari. On 28.07.2011, he took police custody of A1, who surrendered before the Court and on enquiry, he voluntarily gave the confession statement and the same was recorded in the presence of P.W.7 - Pitchai Pillai, Security Inspector of BHEL and one Immanuvel, Village Administrative Officer of Thuvakudi. Ex.P.4 is the admissible portion of the confession statement of A1. Pursuant to the same, he recovered M.O.2 - Lock and Key under a cover of Mahazar Ex.P.5, M.O.-3 - another Key under a cover of Mahazar Ex.P.6, M.O.4 - Jewels under a cover of Mahazar Ex.P.7, M.O.5 - Twisted Chain under a cover of mahazar Ex.P.8, M.O.6 series under a cover of mahazar Ex.P.9. On the next day, he arrested A2 near sugar mill in the presence of the same witnesses and recorded the confession statement voluntarily given by him. The admissible portion of the confession statement of A2 is marked as Ex.P.10, pursuant to the same he recovered M.O.7 - Zimmikki stead and Fancy stead under a cover of Mahazar Ex.P.11 and M.O.8 - Necklace and Gold chain under a cover of Mahazar Ex.P.12. He recovered the dress worn by the deceased under a cover of Mahazar Ex.P.24, Seegakkai powder under a cover of mahazar Ex.P.25, Godrej key under a cover of mahazar Ex.P.26, Godrej lock and key under a cover of mahazar Ex.P.27. Then, he remanded both the accused to judicial custody and handed over the Material Objects to the concerned Court under Form 95.

2.7. After Chellamuthu's transfer, P.W.16 - Govindaraj, Inspector of Police continued the investigation and examined P.W.10 - Dr.A.Ravikumar.

2.8. After P.W.16's transfer, P.W.17 - Selvi, continued the investigation and she had filed the Charge Sheet on 30.01.2012 on the file of the Court of Judicial Magistrate No.VI, Tiruchirappalli, charging the appellant/accused for the aforesaid offences, who took it on file.

2.9. Pursuant thereto, the Committal Court issued summons to the accused and on their appearance, furnished him copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal District Court. Tiruchirappalli, which in turn



made over the same to the III Additional District and Sessions Court, Tiruchirappalli, which took it on file in S.C.No.51 of 2015. Thereupon, the respondents/accused were issued with summons and on their appearance, charges under Sections 302, 404, 380 and 201 IPC have been framed.

2.10. The prosecution, in order to sustain its case, examined PWs.1 to 17, marked Exs.P1 to P32 and also marked M.Os.1 to 8. The respondents/accused were questioned under Section 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances made out against them and they denied it as false. The respondent/accused did not examine any witness or marked any document.

2.11. The learned Trial Court, on a consideration of oral and documentary evidence and other materials, acquitted the accused on the ground that the charges framed against them are not proved beyond reasonable doubt, vide impugned judgment dated 08.07.2015 and challenging the same, the present Criminal Appeal is filed by the State.

3. Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the appellant/complainant would emphatically contended that the learned III Additional District and Sessions Judge, Tiruchirappalli has committed a serious mistake in acquitting the accused/respondents on two flimsy grounds that (i) no independent witness was examined from Ranipet for recovery of Material Objects and (ii) no procedure has been followed for recording the finger prints of the first accused.

4. Explaining further, the learned Additional Public Prosecutor argued that P.W.1 is the son of the deceased, who was working as a Store Keepers in Trichy BHEL, whereas P.W.2 is the daughter-in-law of the deceased and also wife of P.W.1, who is the son of the deceased. A1 is a driver, working in a Travel Agency and A2 is a friend of A1. While so, on 07.07.2011, when the deceased was alone in her house and the family members went out for their works, taking advantage of the frequent visit to the deceased house to drop one Srinivasan, who often used to hire the car from the Travel Agency, in which A1 was working, A1 and A2 came to the house of Nagalakshmi (deceased) and they enquired about her health. The poor deceased lady unaware of the conspiracy of A1 and A2 invited them into the house and gave them tea. At that time, both the accused came behind her, forcibly laid down her horizontally by pressing her neck, A1 with his legs compressed on her stomach and also strangulated her neck. A2 closed her nose and mouth with his hands and due to asphyxia, she died. Thereafter, both the accused robbed the jewels and left from the house and thereafter, both A1 and A2 in order to destroy the evidence poured Seekaikai Powder on the face of dead body of Nagalakshmi and then locked the door and went away. When the family members of the deceased came home and found that Nagalakshmi was murdered and the jewels were missing, P.W.1 lodged



a complaint under Ex.P.1 and based on his complaint a case was registered by P.W.11, Sub-Inspector of Police, Boiler Plant Police Station in Crime No.61 of 2011 for the commission of offences under Sections 302, 404, 380 and 201 I.P.C. Chellamuthu, the Inspector of Police, took up the case for investigation. In the meantime on 22.07.2011, A1 surrendered before the learned Judicial Magistrate, Ranipettai and he was taken to Police Custody and his confession statement was recorded on 28.07.2011 at 6.45 p.m. Pursuant to the confession of A1, A2 was arrested. Based on the confession of A1 and A2, the jewels were recovered from the pawn brokers P.Ws.8 and 9 and also from their house and the lock and key from the thorny bushes. P.W.7, the athatchi witness supported the prosecution case for the recovery of the jewels from the house of P.W.1 and moreover P.W.8 and 9 pawn brokers also supported the prosecution case. The learned trial Court ought to have seen that only as per the confessions made by A1, A2 was impleaded and as per the confession of both A1 and A2 the pledged jewels have been recovered from the pawn broker shops and from their houses. The jewels were also identified by P.W.1 - son of the deceased and P.W.2 - daughter-in-law of the deceased. P.Ws.8 and 9 pawn brokers also corroborated the evidence of P.Ws.1 and 2. Their evidence cannot be easily brushed aside. P.Ws.8 and 9 pawn brokers have admitted that they received the gold jewels without I.D. Proof, but obtained the signatures of the accused. The finding given by the learned trial Court that there was no independent witness from Ranipet examined for recovery is wholly unjustified and unacceptable.

5.Explaining further, the learned Additional Public Prosecutor giving his reasons would submit that the trial Court ought not to have overlooked the evidence of pawn brokers, who deposed that the jewels pledged with them were recovered from the respective pawn shops. He has demonstrated that when the pawn brokers have admitted that they have received the gold jewels without I.D. Proof, but obtained the signatures of the accused Nos.1 and 2, the receipts for the same have been recovered from the shops and that were marked, which are carrying the signatures of A1 and A2. Such a speaking evidence produced by the prosecution, which is an unimpeachable independent evidence, ought not to have been overlooked.

6.Coming to the finger prints, showing the finger prints of A1, learned Additional Public Prosecutor submitted that the finger prints of A1 have been found from the scene of crime and the finger print report has also been marked as Ex.P.21. The report clearly shows that the chance prints taken from the place of occurrence have tallied with the finger prints of A1. When the case of the prosecution has been presented without giving rise to any doubt, the learned trial Court wrongly acquitted A1 and A2 by



giving much importance to the procedural lapses of lifting finger prints by erroneously quoting order 836(4)(k) of the Tamil Nadu Police Standing Orders, which states that finger prints shall be taken only by the officers declared by the Superintendent of Police in the mofussil or Commissioner of Police, in the city of Madras, to be qualified to take clear and well-rolled impressions. The way in which the trial Court has found fault with P.W.13 holding that P.W.13 has not properly taken the finger prints as per the procedure laid down by law is clearly erroneous.

7. Again assailing the said conclusion arrived by the trial Court disbelieving the evidence of P.W.13, especially for the reason that she has not properly taken the finger prints as per the procedure, the learned Additional Public Prosecutor has stated that the occurrence took place on 07.07.2011 at about 10.00 a.m. and the Government has issued G.O.Ms.No.1668 Home (Prison - I) Department dated 13.11.2007, revising the rules under Section 8 of the Identification of Prisoners Act, 1920, which is based on the decision of this Court in Criminal Appeal No.810 of 1998 dated 16.12.2002, which had emphasized the necessity for framing of appropriate rules under Section 8 of Identification of Prisoners Act, 1920. Based on the directions issued by this Court, the Director General of Police has placed the proposal before the Tamil Nadu Committee for Revision of Police and Prison Laws and Rules for their views. In turn the Committee has framed revised draft Tamil Nadu Identification of Prisoners Rules and forwarded the same to the Government. The Committee has also recommended that while notifying the new Rules, the Government may delete Police Standing Order 801(4)(k), which also speaks the same to avoid confusion. The revised Rules were notified under Section 8 of the said Act and finally deletion of the provision in Police Standing Order 801(4)(K) has been recommended separately. Rule 4 (m) of the Tamil Nadu Identification of Prisoners Rules, 2007 clearly says that Finger impression shall be taken by a Finger Print Expert or a police officer of the rank of police constable or above. Again while dealing with foot print impressions, Rule 5 (b) says that foot print impressions shall be taken by Foot Print Experts or a Police Officer of the rank of a Sub-Inspector of Police or above. Since, in the present case, the Rules which are in force have been followed, the learned trial Court was wrong in holding that finger prints of suspects must be taken by the person, who is declared by a Superintendent of Police in the mofussil or Commissioner of Police, in the city of Madras, to be qualified to take clear and well-rolled impressions. As a result, the finger prints of A1, as per the finger prints report, having tallied with the chance finger prints has been unjustifiably overlooked. Thus, although the prosecution has proved its case by chain of events by producing documentary or oral evidence, the

<https://hdservices.ecourts.gov.in/hdservices>



8. Again continuing his arguments, the learned Additional Public Prosecutor has submitted that the prosecution has proved the last seen theory. through P.W.14 - M.Saravanakumar, who is a security guard working in BHEL. The trial Court acquitted the accused giving undue weightage to defective investigation, however, there is no defective investigation. The prosecution has proved that A1, driver, who attended P.W.1's father's funeral on 25.06.2011 came along with his friend to the deceased house on 29.06.2011 and they told P.W.1 that they came to get blessings from the deceased. The prosecution has established the case that the accused came to the place of occurrence and that has been supported by the presence of finger prints of A1 in the house of the deceased as per Ex.P.21 finger prints report and it has been further supported by P.W.8 - Sureshkumar and P.W.9 - B.Bagendaran, pawn brokers, who deposed that on 09.07.2011 A1 pledged the jewels and P.W.9 also corroborated the evidence that on 08.07.2011 A2 pledged the jewels and subsequently on the basis of the confession statements, the same were also recovered in the presence of P.W.7, therefore, there is no justification at all for the Trial Court to disbelieve the signatures of A1 and A2 found in the receipts maintained by the Pawn brokers. For all these, he pleaded for reversing the order of acquittal.

9. Further, the learned Additional Public Prosecutor relied on the judgment of the Hon'ble Apex Court in **Ganesh Lal v. State of Rajasthan [(2002) 1 SCC 731]** for a proposition that murder and robbery being an integral part of same transaction, presumption under Limitation Act 114 of the Evidence Act can be applied for holding that the accused is guilt of not only having committed robbery but also murder of the deceased. In the case on hand, since the recovery of stolen articles is proved, it goes without saying that both the robbery and murder are closely interlinked, the same are clearly established.

10. On the other hand, the learned counsel appearing for the accused/ respondents submitted that it is a case of circumstantial evidence. No independent witness has been examined for showing the recovery said to have been made in Ranipet. Secondly, the prosecution has heavily relied on the finger prints of A1 that is said to have been found in the place of occurrence. Therefore, the trial Court has rightly following the judgment of the Division Bench of this Court in **Balu v. Inspector of Police, Jamnamarathur Police Station [2014 (1) MWN Crl. 607 (DB)]** held that finger prints of suspects must be taken by the person, who is declared by a Superintendent of Police in the mofussil or Commissioner of Police, in the city of Madras, to be qualified to take clear and well-rolled impressions, whereas in the present case P.W.13, Sub-



Inspector of Police, (Finger Print), Thali, Thanjavur District has not been declared by the competent authority as qualified person, therefore, the conclusion reached by P.W.13, which is not as per the procedure laid down by the law, being a crucial in connecting the prosecution case cannot be taken into account. Moreover, when the evidence of P.W.13 has been held unbelievable and untrustworthy and besides the evidence of P.W.14, staff working in BHEL, Trichy also has not been found as trustworthy because there was no identification parade conducted by the prosecution, the trial Court came to the right conclusion that on the unsafe evidence claimed by the prosecution, which has not proved the prosecution case beyond reasonable doubt, it is not safe to convict the innocent persons and hence, the appeal is liable to fall.

11.This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

12.The following questions arise for consideration:-

[i] Whether the impugned judgment passed by the trial Court holding that the respondents/accused are not guilty of the charges is sustainable? and

[ii] Whether the impugned judgment of acquittal is liable to be reversed?

Question No. [i] :

13.The prosecution in order to substantiate that Nagalakshmi, mother of P.W.1 - S.Nagarajan, was done to death in an incident that took place at 10.00 a.m. on 07.07.2011, has relied on the evidence of postmortem doctor Dr.A.Ravikumar examined as P.W.10 and also the contents of the postmortem certificate marked as Ex.P17 issued by P.W.10. Following the inquest made by Chellamuthu, the investigating officer, the dead body was subjected to postmortem by P.W.10, who has deposed before the Court and the contents of the postmortem certificate issued by him were also proved. It is also not the case of the defence that the deceased not died due to homicidal violence. Hence the trial Court was right in recording the finding that the deceased died out of homicidal violence.

14.The prosecution based its case on circumstantial evidence as there is no direct eye-witness. When A1 surrendered before the District Munsif cum Judicial Magistrate, Ranipet on 22.07.2011, he was taken into police custody for three days. During enquiry, he voluntarily gave the confession statement and the same was recorded in the presence of P.W.7 - Pitchai Pillai, Inspector of BHEL and one Immanuvel, Village



Administrative Officer of Thuvakudi. Ex.P.4 is the admissible portion of the confession statement of A1. Pursuant to the same, the investigation officer recovered M.O.2 - Lock and Key under a cover of Mahazar Ex.P.5, M.O.-3 - another Key under a cover of Mahazar Ex.P.6, M.O.4 - Jewels under a cover of Mahazar Ex.P.7, M.O.5 - Twisted Chain under a cover of mahazar Ex.P.8, M.O.6 series under a cover of mahazar Ex.P.9. On 30.07.2011, he arrested A2 near sugar mill in the presence of same witnesses and recorded the confession statement voluntarily given by him. The admissible portion of the confession statement of A2 is marked as P.W.10, pursuant to the same he recovered M.O.7 - Zimmikki stead and Fancy stead under a cover of Mahazar Ex.P.11 and M.O.8 - Necklace and Gold chain under a cover of Mahazar Ex.P.12.

15.It is the case of the prosecution that recoveries of M.Os.2 to 8 were made on the basis of the confession statements given by A1 and A2 in the presence of P.W.7 and another. The pawn brokers P.Ws.8 and 9 have also supported the prosecution case that A1 and A2 have mortgaged the gold jewels without I.D. but they have obtained their signatures, which also tallied with the signatures of A1 and A2. Such recoveries purely made on the basis of the confession statements of the accused, which were established through independent witnesses P.W.8 and 9 cannot be disbelieved.

16.Now before going into the veracity of the recovery leading to the participation of A1 and A2, we have to see whether any recovery has been made relating to the proof of the commission of offences on A1 and A2. P.W.8, Sureshkumar is the owner of N.Madanlal Sowcar Pawn broker at Katpadi. P.W.8 has witnessed that on 09.07.2011, A1 has pledged paired gold black bead chain and crystal chain weighing 23 ½ grams and got Rs.26,000/-, for which he has issued receipt Ex.P.13, in which A1 has affixed his signature. P.W.9, B.Bagendran, is owner of Lakshmi Pawn Shop at Katpadi. P.W.9 has witnessed that on 09.07.2011, A1 has pledged Twisted chain weighing 3 sovereigns and got Rs.34,000/-, for which he issued receipt Ex.P.15, in which A1 has affixed his signature. The signature of the first accused found in the confession statement tallied with the signature found in Exs.P.13 and P.15 receipts issued by P.Ws.8 and 9 and the paired gold black bead chain and crystal chain weighing about 23 ½ grams and the twisted chain weighing about 3 sovereigns were clearly identified by P.Ws.1 and 2, son and daughter-in-law of the deceased. Regrettably, the trial Court has not dealt with this vital aspect in the impugned finding arrived and resultantly, reached an unacceptable conclusion. Therefore, we have no hesitation to hold that the finding of the trial Court on this crucial evidence spoken by P.Ws.1 and 2 supported by P.Ws.7 to 9 showing the

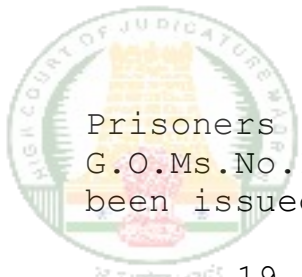


appreciate the prosecution evidence.

17. When the trial Court has framed the point for consideration, "whether the charges against the accused are proved beyond all reasonable doubts", it is quite surprising to us as to how the evidence of P.Ws. 8 and 9 identifying the recoveries that have been corroborated by P.Ws. 1 and 2 could be overlooked. These evidences have been completely not considered. It is well settled law that any conclusion reached ignoring the vital aspect is perverse. Therefore, the findings given by the trial Court in not looking upon the evidences of P.Ws. 1, 2, 7, 8 and 9 is wholly erroneous.

18. The judgment impugned suffered yet another infirmity in rejecting the finger prints of the accused taken by the Inspector of Police P.W. 13 from the place of occurrence stating that the chance prints marked as R1 and R2 developed on the Steel Bureau tallied with the right thumb finger and right middle finger prints of A1 is without any basis. It is unnecessary for the trial Court to extract Standing Order 836(4)(k) of the Tamil Nadu Police to hold that finger prints of suspects must be taken by the person, who is declared by a Superintendent of Police in the Mofussil or Commissioner of Police, in the city of Madras, to be qualified to take clear and well-rolled impressions, for, in the present case, the conclusion that P.W. 13 has not properly taken the finger prints as per the procedure laid down by law is also fallacious inasmuch as the Rules framed under Section 8 of Identification of Prisoners Act, 1920 vide G.O. Ms. No. 1668 Home (Prison - I) Department dated 13.11.2007 has not been followed. Further, this Court in Criminal Appeal No. 810 of 1998 dated 16.12.2002 has emphasized the necessity for framing of appropriate rules under Section 8 of the Identification of Prisoners Act, 1920. Pursuant to the same, the Director General of Police has placed the proposal before the Tamil Nadu Committee for Revision of Police and Prison Laws and Rules for their views. Thereafter, the Committee observed that the State Government had already framed Rules under the said Act, 1920 itself. However, the above Rules are out of date since major developments have taken place in scientific knowledge in identification of criminals. More over, in these Rules even Finger Print Experts are not included in the list of Officers authorised to take finger impressions. The Committee therefore has suggested that the Rules under Section 8 of the said Identification of Prisoners Act, 1920, actually require only revision and not framing of Rules. Accordingly, the said Committee has framed revised draft Tamil Nadu Identification of Prisoners Rules and forwarded the same to the Government. The Committee has also recommended that while notifying the new Rules, the Government may delete Police Standing Order 801(4)(k) which also speaks the same to avoid confusion. The Government after careful

<https://www.mca.gov.in/> of the revised draft rules under the Identification of



Prisoners Act, 1920 accepted the same and there upon G.O.Ms.No.1668 Home (Prison - I) Department dated 13.11.2007 has been issued, but this has been ignored by the learned trial Court.

19. It is relevant to extract Rule 3 and relevant portion of Rule 4 of the Tamil Nadu Identification of Prisoners Rules, 2007:

"3.Places for taking measurements and photographs: -

The finger impressions, foot print impressions and photographs of any person for the purpose of the Act, shall be taken only at the following places:-

(i) Magistrates' Courts;

(ii) Police Stations and Outposts, including police lock-ups;

(iii) Prisons.

4.Method of taking measurements of finger impressions:

...

(m) Finger impressions shall be taken by a Finger Print Expert or a police officer of the rank of police constable or above."

20. In the present case, the finger prints of A1 has been rightly taken by the Police Officer. P.W.13 - M.Kalaikkannaki, Sub-Inspector of Police (Finger Prints), Thali has taken the finger prints of A1 as per Rule 4 and after examining the finger prints she found that the right thumb finger print and right middle finger print of A1 are identical to chance finger prints R1 and R2 and her report is marked as Ex.P.21. Rejection of such acceptable scientific evidence showing the finger prints of A1 found in the place of occurrence, which establishes his presence at the place of commission of offence is wholly unwarranted. Therefore, the reasoning given by the trial Court is wholly unsustainable and unjustified. When the trial Court has misconstrued as to how to appreciate the evidence, we have no hesitation to set aside the same. The evidence of P.Ws.1, 2, 7, 8 and 9 has been completely overlooked and therefore, the acquittal of A1 and A2 on mere surmises and conjunctures cannot stand before this Court for a legal scrutiny. Hence, they are liable to be set aside.

21. Section 114 of the Evidence Act also provides that the Court can presume the existence of any fact which it thinks likely to have happened. As per illustration (a) to Section 114 of the Evidence Act, a man who is in possession of stolen goods soon after the theft may be presumed by the Court to be either the thief or one who has received the goods knowing them to be stolen, unless he can account for his possession. The presumption being raised is one of fact than of law. In the facts and circumstances of a given case relying on the strength of the presumption the Court may dispense with the direct proof of certain facts.



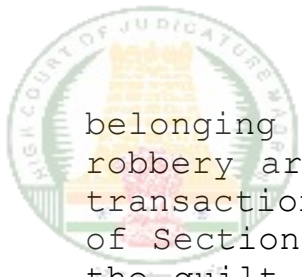
22. The law laid down by the Hon'ble Apex Court in **Ganesh Lal** case (supra) is extracted as under:

"13. In **Baiju v. State of M.P.** [(1978) 1 SCC 588], **Earabhadrapa v. State of Karnataka** [(1983) 2 SCC 330], **Gulab Chand v. State of M.P.** [(1995) 3 SCC 574], **Mukund v. State of M.P.** [(1997) 10 SCC 130] and **A.Devendran v. State of T.N.** [(1997) 11 SCC 720], para 20, murder and robbery were proved to have been integral parts of one and the same transaction and the presumption arising under illustration (a) to Section 114 of the Evidence Act was applied for holding the accused guilty of not only having committed robbery but also murder of the deceased. The presumption was founded on recovery of stolen property belonging to the deceased.

14. While raising such presumption the time factor between the date of the offence and recovery of stolen property from the possession of the accused would play a significant role. Precaution has to be taken that the presumption may not be so stretched as to permit suspicion taking the place of proof. No hard-and-fast rule can be laid down.

15. A review of several decisions of this Court, some of which we have cited hereinabove, leads to the following statements of law. Recovery of stolen property from the possession of the accused enables a presumption as to commission of offence other than theft or dacoity being drawn against the accused so as to hold him a perpetrator of such other offences on the following tests being satisfied: (i) the offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to have been committed as an integral part of the same transaction; (ii) the time-lag between the date of commission of the offence and the date of recovery of articles from the accused is not so wide as to snap the link between recovery and commission of the offence; (iii) availability of some piece of incriminating evidence or circumstance, other than mere recovery of the articles, connecting the accused with such other offence; (iv) caution on the part of the court to see that suspicion, howsoever strong, does not take the place of proof. In such cases the explanation offered by the accused for his possession of the stolen property assumes significance."

23. A close perusal of the above observation would clearly show that if murder and robbery take place and the prosecution is able to prove one integral part viz., recovery of the jewels



belonging to the deceased, it can be presumed that murder and robbery are proved as they are integral part of the one and same transaction. Therefore, if the presumption under illustration (a) of Section 114 of the Evidence Act is to be applied in this case, the guilt is not only robbery but also murder of the deceased. As we mentioned above, the present case has a clear chain of events from the date of arrest of A1 leading to the confession recorded in the presence of P.W.7 and V.A.O., which ultimately lead to the recovery of M.Os.2 to 6. This has been again identified by P.Ws.1 and 2, who are son and daughter-in-law of the deceased, which has been further supported by P.Ws.7 to 9. From these facts and circumstances, the prosecution has established the commission of robbery. Since murder and robbery are proved to be an integral part of one and the same transaction and the presence of A1 in the place of occurrence has been proved through the report of finger print expert, it goes without saying that presumption under Limitation Act 114 of the Evidence Act can be applied for holding that the first accused is guilt of not only having committed robbery but also murder of the deceased. Therefore, we have no hesitation to hold that A1 has committed offence under Sections 302, 404, 380 and 201 IPC.

24. So far as A2 is concerned, he was implicated pursuant to the confession of A1 and he was arrested on 30.07.2011 at 13.00 hours and pursuant to his confession M.O.7 - Zimmikki stead and Fancy stead was recovered under a cover of Mahazar Ex.P.11 and M.O.8 - Necklace and Gold chain was recovered under a cover of Mahazar Ex.P.12. P.W.9, B.Bagendran, who is the owner of Lakshmi Pawn Shop at Katpadi has witnessed that on 08.07.2011, A2 has pledged Zimmikki stead and Fancy stead weighing 1 sovereign and got Rs.11,500/-, for which he issued receipt Ex.P.14, in which A2 has affixed his signature. The signature of the second accused found in the confession statement has tallied with the signature found in Ex.P.14 receipt issued by P.W.9 and the Zimmikki stead and Fancy stead weighing about 1 sovereign that was clearly identified by P.Ws.1 and 2, son and daughter-in-law of the deceased. This aspect has also been completely overlooked without any judicious consideration. Therefore, the charge against A2 for the commission of offence under Section 404 stands proved. Whereas, as there is no finger prints of A2 found in the place of death of deceased, the prosecution has failed to prove the commission of offences under Sections 302, 380 and 201 I.P.C.

Question No. [ii] :

25. In view of reasons assigned above, while reviewing the evidence placed before the trial Court under Sections 378(1)(b) and 386 Cr.P.C., this Court of the view that the acquittal of A1 for the commission of offences under Sections 302, 404, 380 and 201 I.P.C. and the acquittal of A2 for the commission of offence



under Section 404 I.P.C. warrant interference.

26. In the result, this Criminal Appeal is allowed by setting aside the judgment of acquittal dated 08.07.2015, made in S.C.No.51 of 2012 by the learned III Additional District and Sessions Judge, Tiruchirappalli and convicting the first accused for the commission of offences under Sections 302, 404, 380 and 201 of I.P.C. and the second accused for the commission of offence under Section 404 of I.P.C.

27. The respondents are directed to appear before this Court for questioning them regarding the sentence to be imposed. Call the matter on 27.02.2020 (Thursday).

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj  
To

1. The III Additional District and Sessions Judge,  
Tiruchirappalli.
2. do thro The Principal District Judge, Tiruchirappalli.
3. The Judicial Magistrate No.VI,  
Tiruchirappalli.
4. do thro The Chief Judicial Magistrate, Tiruchirappalli.
5. The District Collector, Tiruchirappalli.
6. The Director General of Police, Mylapore, Chennai.
7. The Superintendent, Central Prison, Tiruchirappalli.
8. The Superintendent of Police, Tiruchirappalli.
9. The Inspector of Police,  
Boiler Plant Police Station,  
Tiruchirappalli.
10. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



Copy to

1. The Registrar Judicial,  
Madurai Bench of Madras High Court, Madurai.

2. The Section Officer,  
Criminal Section (Records),  
Madurai Bench of Madras High Court,  
Madurai.(2 copies)

JUDGMENT IN

**Crl. A. (MD)No.96 of 2018**

Delivered on **21.02.2020**

sj(CO)

TR(24.02.2020) 15P 14C