



Bail Slip

The Appellant/ Accused Sasikumar, S/o Balakrishnan, was directed to be released on Bail of this court order dated 23/09/2016 and made in CrI.MP(MD).1193 of 2016 and CRL.A.(MD)No.42 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.07.2021

DELIVERED ON: 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A. (MD)No.42 of 2016

Sasikumar : Appellant

Vs.

State represented by
Inspector of Police,
Namanasamuthiram Police Station,
Thirumayam Taluk, Pudukottai District.
(Crime No.52 of 2011)

: Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment and conviction passed by the learned Sessions Judge, Mahila Court, Pudukottai in S.C.No.8 of 2012, dated 27.12.2012 and acquit the appellant herein.

For Appellant : Mr.M.R.Seenivasan
Legal aid Counsel

For Respondent :Mr.K.Sanjay Gandhi
Government Advocate (Crl.side)

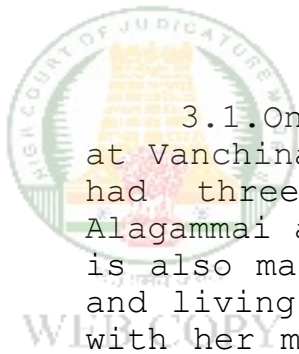
JUDGMENT

This Appeal had been filed by the Accused as against the judgment of conviction and order of sentence in S.C.No.8 of 2012, dated 27.12.2012 passed by the learned Sessions Judge, Mahila Court, Pudukottai.

2.Heard Mr.M.R.Seenivasan, learned Legal Aid Counsel appearing for the appellant/Accused and Mr.K.Sanjay Gandhi, learned Government Advocate (Crl.side) appearing for the respondent/State.

3.The case of the prosecution in brief are as follows:

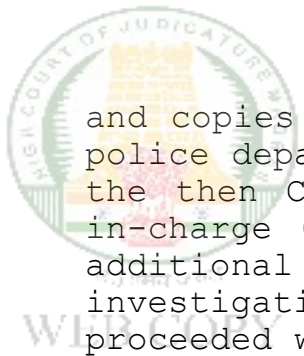
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3.1. One Meenachi Achi, a retired School Teacher, was residing at Vanchinathan Street, Nachanthupatti in Pudukkottai District. She had three daughters viz., Alagammai, Annam and Chinthamani. Alagammai and Annam are married and settled in Chennai. Chinthamani is also married and settled at Sivakasi. Meenachi Achi was a widow and living alone. The youngest daughter Chinthamani came and stayed with her mother Meenachi Achi for about a week and she returned to Sivakasi. Meenachi Achi accompanied her daughter to Sivakasi and after leaving her daughter at Sivakasi, she returned back to her house at Vanchinathan Street in Nachanthupatti, Pudukkottai District. After reaching home, Meenachi Achi called her daughter Chinthamani that she reached home. Being alone at home and being an old widow, all the daughters used to talk to her regularly on her land-line and mobile phone. On 23.03.2011 when the youngest daughter Chinthamani called her but there was no response. Agitated by no response, she had contacted her elder sisters Alagammai and Annam at Chennai. They too tried to contact her mother on 23.03.2011, 24.03.2011 and 25.03.2011, however, there was no response. Therefore, Alagammai contacted her father-in-law Veerappan, who is residing in Kottaiyur, Karaikudi and informed him that for the past two or three days, she was unable to get any response in contacting her mother Meenachi Achi at Nachanthupatti. Hence, she requested him to go to the house of Meenachi Achi and verify whether she is alright or suffering from any disabilities. Accordingly, Veerappan - the father-in-law of Alagammai went to Nachanthupatti and on his way, he contacted the brother-in-law of Meenachi Achi, the uncle of Alagammai by name Adaikalam and both of them went to the residence of Meenachi Achi on 26.03.2011. By around 5 O' clock, on reaching the house of Meenachi Achi, they observed that a foul smell emanated from the house of Meenachi Achi. On seeing through the grill-gate, they found Meenachi Achi lying dead in the hall. Adaikalam had a spare key for the house of Meenachi Achi. Therefore, Veerappan came to Adaikalam house and requested his help. Adaikalam took the key and went to the house of Meenachi Achi and opened the grill-gate. Only after that, they saw the Meenachi Achi lying dead in the hall in a pool of blood. Therefore, both of them went to Namanasamuthiram Police Station and Adaikalam the brother-in-law of Meenachi Achi and uncle of Alagammai had given a complaint under Ex.P-1. As per the complaint under Ex.P-1, P.W-1-Adaikalam had mentioned that somebody had assaulted Meenachi Achi on the head, caused her injuries resulting her death and he suspected that she had been murdered for gain. Further, he had stated that a tenant in that house by name Sasikumar was not found in the house.

3.2. On receipt of the complaint under Ex.P-1 a case in Crime No.152 of 2011 of Namanasamuthiram Police Station was registered by P.W-19-Sumathi-Sub Inspector of Police of Namanasamuthiram Police Station, Pudukkottai Taluk under Section 302 of IPC. She had forwarded the original FIR under Ex.P-26 and original complaint

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and copies of the same was forwarded to the higher officials of the police department including the Circle Inspector, Thirumayam. Since the then Circle Inspector of Police, Thirumayam was on leave, the in-charge Circle Inspector of Ponamaravathy, who was holding full additional charge of Thirumayam Circle, had proceeded with the investigation. Mr.Karunakaran, the then Inspector of Police proceeded with the investigation and went to the scene of occurrence i.e., the residence of Meenachi Achi at Vanchinathan Street, Nachanthupatti. He prepared a rough sketch under Ex.P-27 and Observation Mahazar under Ex.P-5 in the presence of witnesses P.W-1 Adaikalam and P.W-2 Veerappan. He had also conducted inquest on the body of the deceased and prepared inquest report under Ex.P-28. He had also recorded the video of the same and took photograph of the body of the deceased in the scene of occurrence. The video graph is under M.O-9. He had also seized the lock of the house under seizure mahazar in the presence of the witnesses P.W-1 and P.W-2. He had examined P.W-1, P.W-2 and the daughters of the Meenatchi Achi viz, P.W-3 and P.W-4. After conduct of the inquest and after examination of the witnesses, he had altered the case from Section 302 of IPC to the offence under Section 302 of IPC r/w. Section 394 of IPC and sent the alteration report under Ex.P-29 to the Court of the learned Judicial Magistrate, Thirumayam and had forwarded the body of the deceased to the Pudukkottai Government Hospital along with request for conduct of Postmortem and autopsy on the body of the deceased through Head Constable No.836-Kumar with requisition letter. On 29.03.2011, P.W-20-Thiru.Balaguru, the regular Circle Inspector of Police, Thirumayam Police Station, took charge of his post and therefore, the case diary of the investigation was handed over to him by Mr.Karunakaran-Inspector of Police, Ponamaravathy.

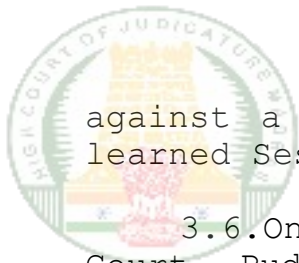
3.3.On 29.03.2011 when P.W-20-Thiru.Balaguru, the Circle Inspector of Police, Thirumayam Police Station, was in his office, P.W-10-Rajendran, S/o.Velusamy, the Village Administrative Officer of Kottaiyur and P.W-9-Rajendran, S/o.Periya Iyya, Village Assistant had approached him along with the surrendered Accused Sasikumar stating that he had surrendered before the Village Administrative Officer and confessed to the crime of having committed the murder of Meenachi Achi. Along with the confession statement of Accused-Sasikumar and report to that effect by the Village Administrative Officer, P.W-20-Inspector of Police had recorded the confession statement from the Accused Sasikumar for which P.W-9-Village Assistant and P.W-10-Village Administrative Officer were the witnesses. As per the confession of the Accused, he had removed the jewels worn by the deceased Meenachi Achi viz., chain and two bangles and had sold it to the jewellers in Pudukkottai and at Ponnamaravathi. Based on the confession of the Accused, P.W-20-Investigation Officer recovered the gold chain worn by the Meenachi Achi from Gnanam Jewellers at Pudukkottai and the two bangles from the Jewellery shop run by Jakubar Ali under seizure mahazar Ex.P-10 in the presence of witnesses Mr.Rajendran and Karuppiyah. The



the residence of deceased Meenachi Achi which was seized by P.W-20-Inspector of Police in the presence of witnesses viz., Rajendran and Karuppiyah and also blood-stained reeper measuring 2 feet long x width of 6 inches x 4.5 c.m. thickness. He had examined the mahazar witnesses Rajendran and Karuppiyah and recorded their statements. He had recorded the statement of the Doctor who conducted the autopsy and issued Postmortem Certificate under Ex.P-20. Also he had forwarded the articles seized under Mahazar for Forensic Examination through requisition letter to the learned Judicial Magistrate, Thirumayam. The learned Judicial Magistrate, Thirumayam, had addressed the letter to the Forensic Department and forwarded the seized articles recovered from the scene of occurrence for forensic examination along with police constables. On receipt of the forensic examination result and articles seized, P.W-20 had recorded the statement of the Forensic Experts and also requested the learned Chief Judicial Magistrate to nominate a Judicial Magistrate to record the confession statement of the Accused Sasikumar and the statement of the witnesses and one Muthu-Gold Smith, who had assisted the Accused to dispose of the jewells which he had removed from the body of the deceased. Based on the requisition of the Investigation Officer, the learned Chief Judicial Magistrate, Pudukkottai, had nominated the learned Judicial Magistrate, Keeranur to record the statement of the Goldsmith under Section 164 of Cr.P.C. Accordingly, the statement of Muthu was recorded by the learned Judicial Magistrate, Keeranur. The statement was received by the Investigation Officer P.W-20 and on completion of the investigation, he had laid the final report under Section 173 Cr.P.C. before the Court of the learned Judicial Magistrate, Thirumayam.

3.4.On receipt of the final report of the investigation by the learned Judicial Magistrate, Thirumayam, the learned Judicial Magistrate, Thirumayam had taken cognizance of the offence alleged in the final report and taken the case on file as PRC No.13 of 2011. On appearance of the Accused, the learned Judicial Magistrate, Thirumayam had furnished the copies to the Accused under Section 207 Cr.P.C. and enquired the Accused regarding his financial capacity to engage a Counsel to defend his case. He had replied that he had the resource to engage a counsel. Therefore, the case being triable by a Court of Sessions, the learned Judicial Magistrate had sent the records in P.R.C.No.13 of 2011 to the Court of the learned Principal District and Sessions Judge, Pudukkottai and bound over the Accused to appear before the learned Principal District and Sessions Judge, Pudukkottai.

3.5.On appearance of the Accused and on receipt of the records in PRC No.13 of 2011, the learned Principal District and Sessions Judge, Pudukkottai, had taken cognizance of the offence and numbered the case as S.C.No.08 of 2012. On appearance of the Accused, the case was made over to the Court of the Special Judge, Fast Track



against a woman, the Accused was bound over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Pudukkottai.

3.6. On appearance of the Accused before the Fast Track Mahila Court, Pudukkottai, the learned Sessions Judge had framed charges against the Accused under Sections 302 and 404 of IPC. The Accused denied the charges and claimed to be tried. Therefore, trial was ordered.

3.7. In the trial, the prosecution had produced witnesses P.W-1 to P.W-20, marked documents under Ex.P-1 to Ex.P-30 and material objects M.O-1 to M.O-9. P.W-1, the brother of the husband of the deceased Meenachi Achi had deposed regarding his visit to the house of Meenachi Achi along with P.W-2-Veerappan and lodging of complaint under Ex.P-1 suspecting murder of his sister-in-law Meenachi Achi.

3.8. P.W-2 had corroborated the evidence of P.W-1 by deposing that his daughter-in-law Alagammai had contacted him on 23.03.2011 stating that for the past three days of her repeated attempt to contact her mother was futile and requesting her father-in-law P.W-2 to visit her mother's place and find out whether her mother is ill or suffering from any inabilities. On his visit on 26.03.2011 along with P.W-1, he found foul smell emanating from the house of Meenachi Achi. Therefore, he went to the house of P.W-1 and brought the spare key and they had opened the grill-gate and entered into the compound. On opening the grill-gate, they found Meenachi Achi lying dead in a pool of blood. Suspecting murder, they had gone to Namanasamuthiram Police Station and P.W-1 lodged a complaint under Ex.P-1. Based on which, the case was registered by Namanasamuthiram Police. P.W-3 is the youngest daughter of Meenachi Achi.

3.9. P.W-3-the eldest daughter of deceased Meenachi Achi and daughter-in-law of P.W-2 had in her evidence deposed regarding her inability to get a response from her mother on her repeated attempt over phone and requested her father-in-law P.W-2 to visit her mother. On the visit by P.W-2 along with P.W-1, they found that her mother had already dead and foul smell emanating. On receipt of the information, she came down to Nachanthupatti. By that time, the body was removed from the residence and retained in the mortuary of Pudukkottai Government Hospital.

3.10. P.W-4 is Chinthamani - the youngest daughter of Meenachi Achi who had in her evidence deposed that she was at Meenachi Achi's residence till 21.03.2011 and she left for Sivakasi when Meenachi Achi accompanied her and she returned to Pudukkottai on the same night and after reaching home, she contacted her daughter P.W-4 Chinthamani but from the next day onwards, there was no response from her. Therefore, P.W-4 had contacted her sisters Annam and Alagammai. Subsequently, she was informed by Alagammai that their mother was dead. Therefore, she had came down to Nachanthupatti.

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removed and retained at mortuary in Government Hospital. She had also stated that the tenant was missing from the house.

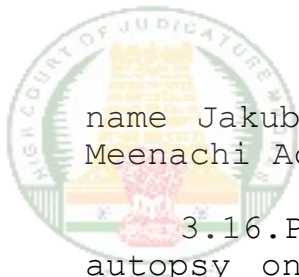
3.11.P.W-5 is Radhakrishnan who had deposed that he is running a jewellery shop in the name of Gnanam Jewellers at Pudukkottai. On 24.03.2011 by 10.00 a.m. an acquaintance of Radhakrishnan by name Balasubramani had brought along with him the Accused in this case viz., Sasikumar along with gold chain to his jewellery shop. He had bought it for Rs.17,000/- and identified the property in the Court.

3.12.P.W-6-Muthu, a goldsmith, who had in his evidence deposed that he is working as a goldsmith in a jewellery shop at Ponnamaravathi. The Accused in this case Sasikumar had approached him on 23.03.2011 by 6.00 p.m. and wanted to sell two gold bangles. On enquiry by P.W-6 Muthu, the Accused had stated that it belongs to his wife and since P.W-6 knows about the family details of the Accused, he did not believe it and probed further for which the Accused stated that he had killed his landlady Meenachi Achi and had removed the jewells and also threatened him that if P.W-6 discloses this to any other people, he will be killed. The Accused threatened P.W-6 as he had refused to sell the property or to help the Accused to sell the property. Therefore, he accompanied the Accused and at Ponnamaravathi, he had sold the two bangles to Jakubar Ali Jewellers and obtained Rs.5,000/- to the Accused. He had come to know about the arrest of the Accused by the Police.

3.13.P.W-7-Scientific Officer from Regional Forensic Science Laboratory, Trichy, had in her evidence deposed that on 17.05.2011 she had received a letter of request from the Court of the learned District Munsif Court-cum-Judicial Magistrate, Thirumayam regarding the properties seized by the police in Crime No.52 of 2011 of Namanasamuthiram Police Station. She had examined the properties and found that the samples contained blood. Further, they had forwarded the samples to the Forensic Department at headquarters at Chennai regarding serum test. Accordingly, they had received the serum test report also under Ex.P-2.

3.14.P.W-10-Rajendran, S/o.Velusamy, who had stated that he was working as a Village Administrative Officer of Kottaiyur Village and on 29.03.2011 the Accused had surrendered before him and given a confession statement. Therefore, he had taken the Accused to the Police and handed him over to the Namanasamuthiram Police Station. The Village Administrative Officer and his Village Assistant had remained witnesses to the confession statement recorded from the Accused by the police and also the recoveries made on the confession of the Accused.

3.15.P.W-13-Rathika is the District Munsif-cum-Judicial Magistrate, Keeranur. She had recorded the statement of P.W-6 in which he had stated that he had helped the Accused Sasikumar to sell two gold bangles to a jeweller at Ponnamaravathi by



name Jakubar Ali and the gold chain removed from the body of the Meenachi Achi to Gnanam Jewellers at Pudukkottai.

3.16.P.W-14-Ilayaraja, the Doctor deposed that he had conducted autopsy on the body of the deceased based on the request of the Inspector of Police, Thirumayam in Crime No.52 of 2011 under Section 302 of IPC. The body was identified by the Head Constable Mr.Kumar. The Postmortem Report was issued under Ex.P-20.

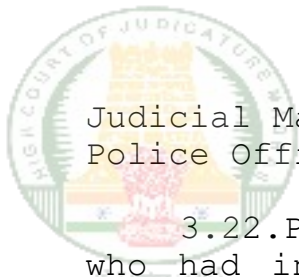
3.17.P.W-15-Saravanan, Photographer, who had in his evidence deposed that on 26.03.2011 he had taken the photograph on the body of the deceased in the house of the deceased from various angles and handed over the same to the Inspector of Police, Thirumayam under Ex.P-22.

3.18.P.W-16-Kumar, Special Sub Inspector of Police in his evidence stated that on 26.03.2011 he had accompanied the body of the deceased Meenachi Achi along with requisition letter of Inspector of Police, Ponamaravathi Police Station to Government Hospital, Pudukkottai and handed over the requisition letter of Inspector of Police to conduct postmortem on the body of the deceased to the duty Medical Officer. After postmortem, the body was handed over to the relatives of the deceased and the dress worn by the deceased was also handed over to the relatives of the deceased.

3.19.P.W-17-Ravi, Special Sub Inspector of Police, had in his deposition stated that on 23.03.2011 he was on duty at Namanasamuthiram Police Station and that he had taken the viscera removed from the body of the deceased along with the requisition letter from the Doctor who conducted the autopsy on the body of the deceased to the Forensic Laboratory at K.A.P. Visvanathan Government Medical College Hospital, Trichy for chemical analysis of the internal organs.

3.20.P.W-18-Karuppai, Village Assistant, in his evidence has deposed that he was working as Village Assistant and on 26.06.2011, he and the Village Assistant by name Rajendran were accompanied the Investigation Officer and remained as witness for the Observation Mahazar under Ex.P-5. Further, on 29.06.2011 P.W-18 and the Village Administrative Officer have accompanied the Investigation Officer and they remained as witness for the Observation Mahazar under Ex.P-24.

3.21.P.W-19-Sumathi, Sub Inspector of Police, All Women Police Station, Pudukkottai, had in her evidence deposed that when she was serving as Sub Inspector of Police at Namanasamuthiram and by 19.00 hrs on 26.03.2011 a complaint was received by her from P.W-1-Adaikalam, based on which, she had registered the case under Ex.P-26 in Cr.No.52 of 2011 under Section 302 of IPC. She had forwarded the Complaint and Original FIR to the Court of the learned



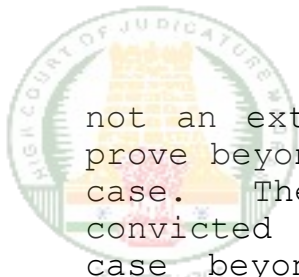
Judicial Magistrate, Thirumayam and copies of the same to the higher Police Officials including Circle Inspector of Police, Thirumayam.

3.22.P.W-20-Balaguru, is the Investigation Officer in this case who had initially deposed in his evidence that Investigation was conducted by Circle Inspector who was holding full Additional Charge of Thirumayam Police Station and only on 29.03.2011, he had joined duty and he had conducted the subsequent investigation. He has received the Forensic Report, examined the Forensic Experts, the Doctor who conducted the autopsy on the body of the deceased and on completion of investigation, he had laid the final report before the Court of the learned Judicial Magistrate, Thirumayam under Section 302 of IPC r/w. 404 of IPC. He had also sent the altered FIR to the Court of learned Judicial Magistrate, Thirumayam.

3.23.After completion of the evidence of Prosecution, the incriminating evidence against the Accused was put to him in examination under Section 313 of Cr.P.C. The Accused denied all the incriminating evidence against him but he did not examine any witness even though he stated that he has witnesses in his favour. After closing of the Prosecution evidence, since the Accused has not let any evidence, the arguments from the Prosecution and the Defence were heard. On the basis of the arguments and on assessment of evidence available before the learned Sessions Judge, Fast Track Mahila Court, the learned Sessions Judge had found the Accused guilty to the charge under Sections 304 (1) and 404 of IPC and sentenced the Accused to undergo imprisonment for ten years and imposed with a fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for two years for the offence under Section 304-Part.I of IPC and to undergo Rigorous Imprisonment for two years for the offence under Section 404 of IPC and ordered the sentences shall run concurrently.

4.Aggrieved by the judgment of conviction and order of sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Pudukkottai, the Accused had preferred this Criminal Appeal before this Court.

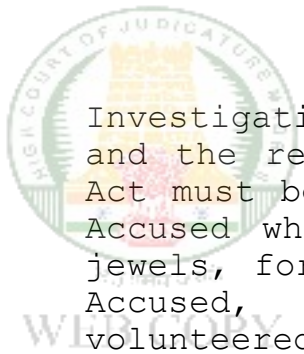
5.The learned Counsel for the Appellant submitted his oral arguments. As per the arguments, the case rests on circumstantial evidence. When the case of the Prosecution rest on circumstantial evidence, the circumstances incriminating the Accused must be beyond reasonable doubt. It should be established beyond reasonable doubt. Here in this case, the Prosecution had not established the case of circumstantial evidence against the Accused beyond reasonable doubt. The Accused is said to have surrendered before the Village Administrative Officer and voluntarily confessed. This is found misleading and unacceptable. For extra judicial confession, the person should have confidence in the person with whom such confession is made. Only then, it will be treated as voluntary and



not an extraneous circumstances. Here, the Prosecution failed to prove beyond reasonable doubt the involvement of the Accused in this case. The learned Sessions Judge, Fast Track Mahila Court, had convicted the Accused when the prosecution had not established the case beyond reasonable doubt. Under those circumstances, the finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, is unacceptable. The case of the Prosecution rests only on the confession statement which is a weak evidence. Therefore, the finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Pudukkottai, is to be treated as perverse and the Accused is to be acquitted.

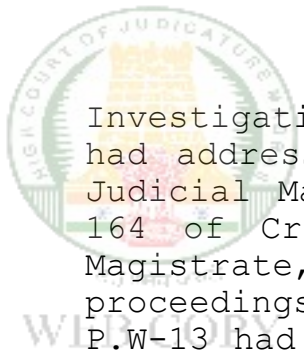
6.The learned Government Advocate (Crl. Side) Mr.K.Sanjay Gandhi, had submitted his reply. As per his reply, P.W-1 to P.W-4 had strongly supported the case of the prosecution and nothing was elicited in their cross-examination favouring the Accused. P.W-6 Muthu, who is an acquaintance of the Accused who had helped the Accused to dispose of the gold jewels to the jeweller at Ponamaravathy and the jeweller at Pudukkottai, had given statement before the learned Judicial Magistrate under Section 164 of Cr.P.C. based on which, the circumstances had to be considered as proved.

7.The Accused is the tenant under Meenachi Achi. As per the complaint under Ex.P-1, P.W-1 had mentioned about the missing of tenant Sasikumar from the house of the deceased Meenachi Achi. By the time the investigation proceeded, the Accused who was watching the proceedings from his place of hide out apprehended that the Police will arrest him any time. Therefore, he had fear in him that he will be caught by the Police. Naturally, he had surrendered before P.W-10-Village Administrative Officer and confessed to the crime which cannot be treated as weak piece of evidence. The same evidence was recorded by the Investigation Officer as a fresh confession and for which, the Village Administrative Officer was the witness. Based on the confession of the Accused, the jewels viz., the gold chain embedded with coral (பவள மாலை) and gold bangles removed from the body of the deceased Meenachi Achi was recovered from Gnanam Jewellers owned by Radhakrishnan. Likewise, the bangles of deceased Meenachi Achi was recovered from Jakubar Ali Jewellers at Ponamaravathy. The argument of the learned Counsel for the appellant/Accused that the jewellers did not have registration certificate and the jewellers did not issue any receipt for the purchase of worn and used jewells is part of the shoddy investigation but the shoddy investigation cannot give benefit to the Accused. The victim of crime is not responsible for the shoddy investigation. When the witnesses had given cogent evidence which inspires confidence of the Judge, the trial Judge can convict the Accused by the said principle that the recovery had been made, surrender of the Accused to the Village Administrative Officer and the subsequent confession to the Village Administrative Officer and



Investigation Officer based on which the properties were recovered and the recovery confession leading to Section 27 of the Evidence Act must be proved. Further more, P.W-6 is an acquaintance of the Accused whom the Accused had approached to help him to sell the jewels, for which P.W-6 refused and hence, he was threatened by the Accused, is found acceptable. Further, P.W-6 had himself volunteered the investigation since he had been threatened by the Accused. Therefore, out of fear, P.W-6 himself approached the Police and given confession statement. Therefore, the Investigation Officer had sought recording of the statement of P.W-6 by the learned Judicial Magistrate which inspires confidence of the Investigation Officer that the investigation is going on the right path. Therefore, P.W-13 who recorded the statement under Section 164 of Cr.P.C. herself was examined by the Investigation Officer was recorded before the learned Judicial Magistrate. The same learned Magistrate was examined before the learned Special Judge, Fast Track Mahila Court, Pudukkottai.

8.Yet, there is clinching evidence that the jewels recovered from the Jewellers P.W-5 and P.W-11 are based on the confession of the Accused and in the presence of the Village Administrative Officer P.W-10 and Village Assistant P.W-9. The recovery had been proved and recovery based on confession of the Accused that clinches the evidence against the Accused. The evidence of P.W-5, 6 and 11 had completed the circumstantial evidence by the prosecution had been proved beyond reasonable doubt. There are human errors particularly a small scale jeweller like Gnamam Jeweller at Pudukkottai and Jakubar Ali Jeweller at Ponnamaravathi who do not issue any printed receipts for the purchase of jewels used by them but they had identified the Accused and the person who accompanied the Accused was their acquaintance. It is true that the jeweller Radhakrishnan mentioned about Balasubramanian and Balasubramanian was not examined by the Investigation Officer and the statement of the said Balasubramanian was not recorded. At the same time, P.W-6 who is a goldsmith by profession and who is an acquaintance of Accused Sasikumar naturally approached him. P.W-6 enquired him about the jewels. The Accused has stated that it belongs to his wife. Since P.W-6 is the acquaintance of the Accused, he is aware of the economic status of the Accused and his wife. Therefore, he had further probed and told the Accused that his wife is not from well-off family. At that time, the Accused confessed to him that he had murdered the landlady Meenachi Achi and confessed to the crime to P.W-6 and also threatened him that if he does not help him in selling the property, he will murder him also. Being threatened, he had no other go than to help him. Also, he had threatened P.W-6 that he should not inform this to anyone. Being threatened P.W-6 had assisted the Accused in selling the jewels to the jewellers whom he has acquaintance. Therefore, fear for his life made him to approach the Investigation Officer whereby the Investigation Officer recorded the statement of P.W-6 and to inspire confidence in the

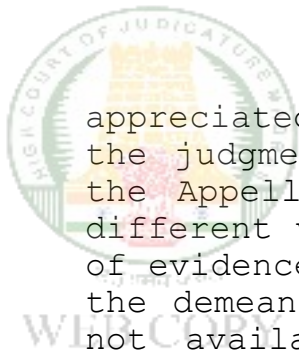


Investigation Officer that the investigation proceed correctly, he had addressed the learned Chief Judicial Magistrate to nominate a Judicial Magistrate to record the statement of P.W-6 under Section 164 of Cr.P.C. Accordingly, P.W-13-District Munsif-cum-Judicial Magistrate, Keeranur had recorded the statement of P.W-6, as per the proceedings of the learned Chief Judicial Magistrate, Pudukkottai. P.W-13 had deposed evidence before the Court of the learned Special Judge, Fast Track Mahila Court, regarding the confession made to her by P.W-6. P.W-6 had in his evidence before the learned trial Judge stuck to the statement made under Section 164 of Cr.P.C. before P.W-13 the learned Judicial Magistrate, Keeranur. Therefore, the involvement of Accused had been cogently proved before the Court. The jeweller P.W-5 who had purchased the gold chain embedded with coral of deceased Meenachi Achi and Jakubar Ali P.W-11-Jeweller at Ponamaravathi had also deposed regarding purchase of two gold bangles from the Accused and advancing money. Both P.W-5 and P.W-11 had stated that being a small time jeweller, they do not maintain printed receipts for purchase of used gold jewels. But they had issued receipt on a white sheet recording the acceptance of gold jewel and payment for the same which may not be ignored by the Court. Therefore, the learned Government Advocate (Crl. Side) had submitted by way of reply that the appeal lacks merit and has to be dismissed. He further submitted that on assessment of evidence as per the Indian Evidence Act, the learned Special Judge, Fast Track Mahila Court, had arrived at a logical conclusion that the Accused is found guilty for the offence under Section 304-Part.I and 404 of IPC and convicted the Accused for the offence under Sections 304(1) and 404 of IPC.

9.Point for consideration:

Whether the judgment of the the learned Sessions Judge, Fast Track Mahila Court, Pudukkottai in S.C.No.8 of 2012, dated 27.12.2012, is perverse and warrant interference by this Court as Appellate Court?

10.A perusal of the records shows that originally the FIR was registered under Section 302 IPC and on proceeding with the investigation, the Investigation Officer was of the opinion that it was a murder for gain. Therefore, the section of IPC in the FIR was altered and alteration report was filed. When the charges were framed, the learned Judge had framed the charges under Section 302 r/w 392 of IPC. After assessing the evidence, the learned Trial Judge had altered the charge for a lesser offence under Section 304 (1) of IPC and under Section 404 of IPC. Therefore, the assessment of the evidence by the learned Sessions Judge, Fast Track Mahila Court, is found justified and acceptable. More than that, as per the ruling of the Hon'ble Supreme Court, in appreciating the evidence by the Appellate Judge, if the learned trial Judge had



appreciated the evidence properly and arrived at a just conclusion, the judgment of the learned trial Judge shall not be disturbed by the Appellate Judge, even though the Appellate Judge arrive at a different view from that of the learned trial Judge on the same set of evidence. The learned trial Judge had the advantage of observing the demeanour of the witnesses and the Accused. This advantage is not available to the learned Appellate Judge. Therefore, the finding of the learned trial Judge is to be given due weightage. Further, the learned Government Advocate (Crl. Side) submitted that regarding the circumstantial evidence, the objections of the learned Counsel for the Accused had been rejected based on the ruling of the Hon'ble Supreme Court regarding "Last seen theory", regarding "shoddy investigation", regarding "circumstantial evidence" against the Accused being proved, the learned Judge had in his judgment in paragraph Nos.28 to 42 had discussed the evidence in the light of the rulings of the Hon'ble Supreme Court which are extracted as under:

"28) The Learned Counsel further pointed out that the alleged recovery of jewels from the jewellery shop is not conclusive evidence. The Learned Counsel had traversed through the evidence of P.W-5 and P.W-11, the jewellery shop owners, who stated that the jewels were converted into ingots and so he had not produced the old jewellery (original). Therefore, he submitted that the recovery of the material objects will not be a conclusive proof to implicate the Accused. The learned Special Public Prosecutor submitted that the prosecution had proved each and every circumstances which had completed the chain of events to bring home the guilt of the Accused. She further pointed out that the recovery of material objects viz., clothes of the deceased, the jewels which had been converted in to ingots and seized from P.W-5 and P.W-11 the jewellery shop owners as new jewels and the evidence of P.W-1 to P.W-20 would all go to show that all the circumstances formed an unsevered and unlinked 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.

29) P.W-5 and P.W-11, the jewellery shop owners admitted in their evidence that they surrendered gold jewellery M.O-1 and M.O-6 and thereby the police seized that said gold ornaments from him.

30) In this case there is clear, cogent, credible or unimpeachable circumstantial evidence are found to incriminate the Accused with the crime. To this entire occurrence, there is no eye-witness but the attendant circumstances had fully been established by the prosecution. The forensic experts as well as the



neighbours and the investigating officer along with team of police had seen the blood stained walls, the floor and various incriminating items seized in the presence of the witnesses after confession of the Accused.(P.W-1, P.W-2, P.W-6, P.W-7, P.W-8, P.W-9, P.W-10, P.W-12, **P.W-18**, P.W-14 to P.W-20). The oral testimony of P.W-1 to P.W-4 bring out that the Accused was residing in one portion of the house of the deceased Meenal Achi as a tenant and about the involvement of the Accused in the commission of the crime.

31) In this case the oral testimony as well as documentary testimony of P.W-10 (V.A.O) who recorded the extra-judicial confession of the Accused are found to be reliable and trustworthy. It is a well settled proposition of law that an extra-judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the Court. **(Ref. 2003 SCC(Cr1.) Page 1965 - State of Rajasthan Vs. Raja Ram)** The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. In this case the evidence of P.W-10 about the confession statement of the Accused. (Ex.P-7) appear to be unbiased, not given P.W-10 remotely inimical to the Accused and in respect of whom nothing had been brought out by the defence side which may tend to indicate that he may have a motive of attributing an untruthful statement to Accused. So the confession statement of Accused is ordinarily admissible in evidence. **(Ref.2008 (2) SCC.(Cr1.) Page 264. Aloke Nath Dutta Vs. State of West Bengal).**

32) That apart, the extra judicial confession has been corroborated by other material evidence. In pursuance of his confession, the valuable stolen properties of the deceased such as golden bangles, and gold chain with pavazham, pearls (gtskzp j';f brapd;) had been recovered. Hence there is no absolute rule that an extra-judicial confession can never be the basis of a conviction. **(Ref. 2011 (1) SCC. (Cr1.)Page 79 Sansar Chand Vs. State of Rajasthan).** The evidence of P.W-10 is found to be clear, unambiguous and it clearly convey that the Accused was the perpetrator of the crime.

33) It is well settled principles of law that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: The Learned Special Public Prosecutor has relied upon the following case laws:

- 1.2006 Cr1.L.J Page 536 Sivakumar Vs. State
- 2.1991 SCC (Cr1.) Page 407 - Padala Veera Reddy Vs. State of Andhra Pradesh.



(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 a 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.

(iv) It must be complete and incapable of explanation of any other hypothesis than that of the guilt of the Accused.

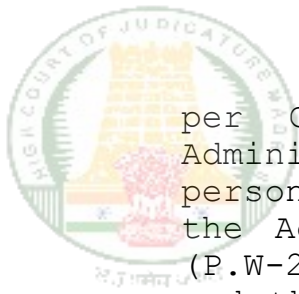
(v) Further to mulct the Accused with criminal liability, prosecution, relied upon the following circumstances. (i) The last seen theory. (ii) Incriminating circumstances just prior to the occurrence. (iii) Incriminating circumstances after the occurrence (iv) Section 27 of Evidence Act recovery of incriminating material objects and the valuable properties (Jewels) of the deceased.

34) In order to prove the last seen theory P.W-12 had been examined to speak about the presence of the Accused before the commission of the offence. But however he turned hostile. The evidence given by him to some extent is found to be admissible. He admitted the death of Meenal Achi and the presence of Accused in her house. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that his version is found to be dependable.

35) It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. In this case, there are other reliable evidence to demonstrate that the Accused was last seen in the house of Meenal Achi immediately prior to her death. The possibility of any other person than the Accused being the author of the crime becomes impossible. The evidence of P.W-6 would clearly indicate that after the occurrence, certain circumstances took place, which are incriminating in nature and they link the Accused with the accusation made against him. The evidence of P.W-10 is found to be genuine.

36) There is also sufficient material evidence to attract the ingredients of Section 27 of the Evidence Act. Missing of the ornaments were mentioned in the complaint Ex.P-1, and those ornaments were subsequently recovered

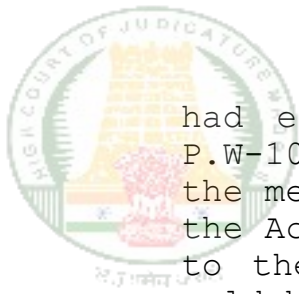
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per Criminal Rules of Practice Rule.72, the Village Administrative Officer (a public servant) is a competent person to record the extra-judicial confession statement of the Accused. The evidence of the Investigating Officer (P.W-20) who recovered the material objects is convincing and the evidence as to recovery are amply corroborated by seizure witnesses P.W-5, P.W-6, P.W-9, P.W-10, P.W-11 and others. There are consistent and cogent material evidence against the Accused with regard to recovery of stolen valuable properties and other available circumstantial evidences would indicate that the theft and murder might have been committed at the same time. The recovery of M.O-1 to M.O-8 are vital chain of circumstantial evidence to link the Accused with the crime. All recoveries were made, immediately after the extra-judicial confession statement. Ex.P-7 extra - judicial confession had been signed by the Accused. P.W-10 who recorded Ex.P-7 was neither a friend of the family of the deceased nor a foe of the Accused so that he could implicate the Accused. He (PW10) has no reason or any benefit to make false declaration in the Court that the Accused had killed Meenal Aachi So the circumstances are incriminating in nature. The evaluation of evidence of PW-10, does inspire confidence. Extra judicial confession is a good piece of circumstantial evidence since it emanates from the Accused himself as to the commission of the offence. It acts as an admission u/s 24 of the Evidence Act.

37) In view of the discussion made supra, this Court is of considered opinion that the extra-judicial confession regarding causing the death of Meenal Aachi, by attacking her with the teak wood plank is found to be genuine and true. The evidence of extra judicial confession by the Accused before the Village Administrative Officer (PW10) inspire confidence of this Court as the same stands corroborated by F.I.R., Ex.P-1, recovery of M.O-1 to M.O-9 as well as medical evidence also corroborates the confession. The prosecution has clearly proved the case that it was a murder for gain and the offence was committed outrageously for want of the gold ornaments of the deceased. It is true that the prosecution has amply proved the case in the light of the material objects, the evidence of prosecution witnesses, statement of the doctor who conducted the postmortem, his opinion etc.

38) The essential ingredients of offence u/s.404, IPC, was the knowledge on the part of the Accused that the gold ornaments (M.O-1 and M.O-6) were in possession of the deceased Meenal Aachi at the time of her last breath and had not since been in the possession of any person legally



had established through the seizure witnesses P.W-9 and P.W-10 and receiver of stolen properties PW5 and PW11 and the mediator PW6 who helped to sell the gold ornaments that the Accused had the knowledge that such properties belonged to the deceased. The Accused had dishonestly removed the gold bangles and gold chain with pavazham, corals embedded, from the dead body of Meenal Achi. In the circumstances, the act of the Accused amounts to dishonest misappropriation of gold ornaments possessed by the deceased and it is an offence which could come under Section 404 of IPC. Meenal Achi was killed by the Accused for the purpose of dishonestly misappropriating her gold ornaments. Hence theft was committed by the Accused in the course of the same transaction of murder. There are clear ocular and documentary evidence to establish that the death had occurred first and thereafter the gold ornaments were removed from the dead body. The evidence of circumstantial witnesses were consistent and amply corroborated by medical evidence. Hence the charges for murder and misappropriation of jewellery of the deceased lady were proper.

39) There are clear unimpeachable and reliable evidence on record to demonstrate that the Accused had murdered the victim Meenal Achi and took away her gold ornaments also which subsequently were recovered at the instance of the Accused from the possession of jewellery shop owners P.W-5 and P.W-11 to whom they were sold by the Accused through a mediator-cum-gold-smith, P.W-6 (Muthu). It was a clear case that the Accused by removing ornaments from the dead body had clearly committed an offence punishable u/w. 404 IPC (Ref.1994 CrI.L.J.Page No.552, Ori-Turuku Budha Vs. State and 1998 CrI.L.J Page 3934 M.P.Shoban Vs. State) The Accused did not take any defence claiming that the recovered ornaments belonged to him.

(40) The next question which is to be decided is whether the criminal act committed by the Accused amounts to murder under Section 300 IPC., or some other offence u/s. 304 of IPC. The medical evidence of the doctor PW14 is clear that all the injuries of the deceased were most probably as a result of an assault by a blunt weapon and in the opinion of the postmortem doctor, the deceased appears to have died due to head injuries (Ex.P 20, Ex.P-21-Skull) Doctor PW14 had also admitted in his evidence that he did not see any incised or any other injuries during the postmortem examination. Thus it appears that the Accused had not used any sharp edged weapon to assault the deceased. That act of the Accused would go to show that the Accused did not have any intention to cause the death of the deceased. Nonetheless the injuries caused by the



Accused were all on the head of the deceased including her parietal and temporal regions. Thus the Accused had the intention of causing bodily injury as is likely to cause death and he is liable for punishment for culpable homicide not amounting to murder under Section 304 Part 1 of IPC., on similar facts, the Supreme Court had held in a case law which is reported in **1995 Supp. (3) SCC 525 State of Punjab Vs. Tejinder Singh and another** and **2012 (4) MLJ. (Crl.) 612 SC Selvam Vs. State of Tamil Nadu**. The facts involved in this case are crystal clear to demonstrate that the Accused had no clear intention to kill the deceased. Where the act is done on grave and sudden provocation which is not sought or voluntarily provoked by the offender himself, the offence would fall under the exceptions to Section 300 of IPC.

(41) There are two apparent distinctions between 304 Part.I and Part.II, one is in relation to the punishment while other is founded on the intention of causing that act, without any intention but with the knowledge that the act is likely to cause death. Hence classification of an offence in to either part of section 304 IPC, is primarily a matter of fact. This would be decided namely intention and knowledge can be inferred with reference to the nature of the offence, intention of the offender, weapon used the place and nature of the injuries, existence of premeditated mind, and to some extent motive for commission of the crime.

(42) The intention of the Accused probably was to merely cause bodily injury so as to commit theft of gold ornaments of the deceased. However this court cannot overlook that such injury could result in death of the deceased. Thus the offence committed by the Accused was only culpable homicide not amounting to murder. Under these circumstances, this Court is inclined to bring down the offence from first degree of murder to culpable homicide not amounting to murder, punishable under section 304 Part.1. This is not a case of knowledge simplicitor but that of intention ex-facie. There was not only an absence of the intention to cause death but also an absence of intention to cause such bodily injury that in the ordinary course of things is likely to cause death. (Ref.2012(5) SCC.134-Aradadi Ramudhu Vs. State.) There is no concrete evidence to establish that the Accused had committed the crime out of grave and sudden provocation. In view of the discussions made supra, the offence is partially modified and altered from the offence punishable u/s. 302 IPC., in to one under Section 304 Part. I of IPC. Hence it is held that the Accused is found guilty of the offence under



Section 304 Part.I, IPC."

11.In the light of the above said discussions of the learned Sessions Judge, nothing is found perverse as the learned Judge had extensively discussed the ingredients of the Indian Evidence Act and ingredients of Indian Penal Code and the lapses which had naturally occurred in the investigation process. Still the circumstantial evidence placed by the prosecution had proved before the Court cogently that the guilt of the Accused was with an intention to rob jewells from the landlady which had caused injury on the deceased. His intention was only to rob the jewells worn by the deceased and not to cause murder. Therefore, the learned Judge had even though charged the Accused for the offence under Section 302 of IPC, convicted the Accused for the lesser offence under Section 304 (1) of IPC. In the concluding paragraph, the learned trial Judge had observed that for the offence under Section 304(1) of IPC, the Accused was convicted and sentenced to undergo imprisonment for ten years with fine of Rs.10,000/- (Rupees Ten Thousand only), and for the offence under Section 404 of IPC, sentenced to undergo two years of Rigorous Imprisonment.

12.The point for consideration is answered in favour of the Prosecution and against the appellant/Accused. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Pudukkottai in S.C.No.8 of 2012, dated 27.12.2012, is not perverse warranting interference by this Court as Appellate Court.

In the result, the Appeal is dismissed as having no merits.

The learned Sessions Judge, Fast Track Mahila Court, Pudukkottai, is directed to issue warrant to secure the Accused to undergo the remaining period of sentence as per the judgment of the learned Sessions Judge, Fast Track Mahila Court, Pudukkottai, passed in S.C.No.8 of 2012, dated 27.12.2012, which is confirmed in this appeal. The period of detention already undergone by the Accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (Records)

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To

1.The Sessions Judge, Mahila Court, Pudukottai.

2.The Judicial Magistrate, Thirumayam.

3.The Chief Judicial Magistrate, Pudukottai.

4.Inspector of Police,
Namanasamuthiram Police Station,
Thirumayam Taluk, Pudukottai District.

5.The Superintendent Central Prison, Trichy.

6.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Records Keeper,
Criminal Records,
Madurai Bench Of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-31113[F] dated
04/10/2021)

CRL.A.(MD)No.42 of 2016
01.10.2021

RD(04.04.2022) 19P 10C