



BAIL SLIP

The appellant/accused namely ANITHA @ RATHIKA, FEMALE, AGED 35 YEARS, W/o.Esakkipandi (in Crl.A.No.526 of 2018) and ESAKKI PANDI, AGED 37 YEARS, S/o.Thangapandi (in Crl.A.No.144 of 2019) were directed to be released on bail as per the order of this court, dated 18/07/2019 in Crl.M.P(MD)No.5447 of 2019 in Crl.A(MD)No.526 of 2018 and Crl.M.P(MD)No.6007 of 2019 in Crl.A(MD)No.144 of 2019 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.A.(MD)No.526 of 2018

and

Crl.A.(MD)Nos.110 & 144 of 2019

and

Crl.M.P(MD) No.4943 of 2021

- | | | |
|--------------------|-----|---|
| 1.Anitha @ Rathika | ... | Appellant /Accused No.3
in Crl.A(MD)No.526/2018 |
| 2.Karuppasamy | ... | Petitioner/Appellant /Accused No.2
in Crl.A(MD)No.110/2019 |
| 3.Esakki Pandi | ... | Appellant /Accused No.1
in Crl.A(MD)No.144/2019 |
| -vs- | | |

State represented by,
The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.
(Crime No.393/2010)

... Respondent/Complainant
in all Crl.Appeals

COMMON PRAYER: Criminal Appeals filed under Section 374(2) of Cr.P.C., against the Judgment passed by the learned III Additional District and Sessions Judge, Tirunelveli, Tirunelveli District in S.C.No.397 of 2015, dated 29.06.2018.

For Appellants	:	Mr.V.Kathirvelu
in Crl.A.526/2018		Senior Counsel,
& Crl.A.144/2019		for Mr.K.Prabhu

For Appellants	:	Mr.S.Sivasubramanian,
in Crl.A.110/2019		

For Respondent	:	Mr.A.Thiruvadikumar
in All Crl.A		Additional Public Prosecutor



COMMON JUDGMENT

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

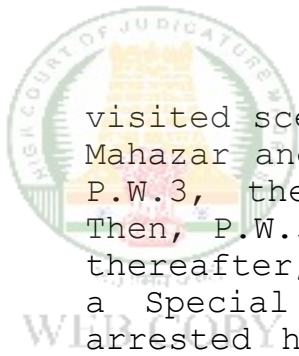
The appellants are A1 to A3 in S.C.No.397 of 2015, on the file of the learned III Additional District and Sessions Judge, Tirunelveli, Tirunelveli District, and they stood charged and tried for the offences under Sections 120-B, 302, 392 and 201 of I.P.C.

2. The trial Court, vide impugned judgment dated 29.06.2018, has convicted the appellants herein, for the above said offences and imposed the sentences, thus:

Accused	Conviction	Sentence
Accused 1 to 3	U/s.120-B of I.P.C.	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment.
Accused 1 to 3	U/s.302 of I.P.C	To undergo life imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo six months rigorous imprisonment.
Accused 1 to 3	U/s.392 of I.P.C	To undergo 10 years Rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months imprisonment each.
Accused 1 to 3	U/s. 201 of I.P.C	To undergo 5 years Rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months imprisonment.

3. Challenging the same, A1 filed Crl.A.(MD)No.144 of 2019; A2 filed Crl.A.(MD)No.119 of 2019 and A3 filed Crl.A.(MD)No.526 of 2018.

4. The case of the prosecution is that, the deceased in this case one Arputhamani Victoria, was residing alone in Perumalpuram N.H.Colony. A1 and A3 are her tenants. A2 is the friend of A1. A1 and A3 were in need of money, so, both of them conspired with A2 to murder the deceased and to take her jewels. In pursuance of the conspiracy, on 23.07.2010, all the accused strangled her, and caused her death and stolen the jewels worn by the deceased. Thereafter, A1 and A2 took the body in a cycle and thrown it in a channel near Kalvettankudi, then all the accused absconded. Found the deceased missing, P.W.1, daughter of the deceased had given a complaint before the respondent police on 18.08.2010, alleging that the deceased was found missing from 13.08.2010. Based on the complaint, P.W.9, Inspector of Police, registered the F.I.R. in Crime No.393 of 2010, for woman missing and commenced investigation,



visited scene of occurrence, there he preferred Ex.P12 / Observation Mahazar and Ex.P13/Rough Sketch. Subsequently, A1 appeared before P.W.3, the Village Administrative Officer, confessed his crime. Then, P.W.3 took A1 to the place where the deceased body was found, thereafter, he recorded his confession statement / Ex.P24, and with a Special Report / Ex.P23, produced him before P.W.9. P.W.9 arrested him, on such arrest, he has voluntarily come forward to give a confession.

5. Based on the disclosure statement, P.W.9 recovered the dead body, and conducted inquest by examining the witness and preferred inquest report / Ex.P14. Then, he sent the body for postmortem, through the Head Constable/P.W.7. Thereafter, he prepared Ex.P8/ Observation Mahazar and rough sketch / Ex.P15. P.W.9, also recovered the stolen jewels / M.Os.1 to 3, from the jewellery shop owned by one Raja @ Vembadimuthu at Tirunelveli Town, and also recovered woollen blanket / M.O.4, TVS XL / M.O.7, M.O.5 / TV and Hercules Cycle / M.O.6. and handed over the investigation to P.W.11. He continued the investigation and arrested A2, on his arrest, he voluntarily come forward to give a confession, on the admissible portion of his confession, he recovered a gunny bag/M.O.8, and sent him for remanded to judicial custody. In the meantime, P.W.6 / Doctor, working in Forensic Medicine Department, in Tirunelveli Medical College Hospital, conducted postmortem autopsy in the dead body and prepared the postmortem report / Ex.P.9, and found the following injuries:-

"Appearance found at the postmortem :

Moderately nourished body of a female. Finger and toe nails blue. Artificial denture seen in upper jaw. Body saponified completely and covered by adipocere. Body emits sweetish smell. Adipocere appears to be soft, moist, whitish and greasy.

A horizontal dark colour mark of size 30 x 4cm seen in the middle of neck, which encircles the neck completely. Few maggots of length 1cm seen over front of chest. Right hand found missing below the level of wrist joint.

Other Findings:

All internal organs identifiable.

Hyoid bone shows postmortem disarticulation.

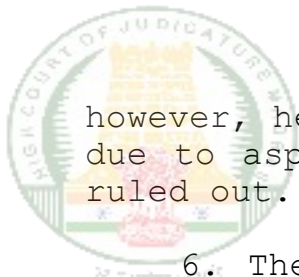
Brain : Pasty in consistency..

Final Opinion :

Could not be made out due to decomposition.

Body identified by incharge Police Constable. "

The Doctor could not give any definite opinion regarding the cause of death, as the body was in advanced stage of decomposition,



however, he has given final opinion /Ex.P10, stating that, the death due to asphyxia due to ligature compression of neck could not be ruled out.

6. Then, P.W.11, handed over the Investigation to P.W.13. He completed the investigation, by recording the statements of other witnesses and filed the final report for the offence under Sections 120-B, 302, 392 and 201 of I.P.C.

7. Based on the above materials, the trial Court framed the charges against the accused, as mentioned above. However, the appellants/accused 1 to 3 have denied the same. The prosecution in order to sustain their case, examined 13 witnesses, marked 24 documents and also produced 10 material objects.

8. Out of the witnesses examined, P.W.1, is the daughter of the deceased, she was working as a teacher at Alwarneri. Since the deceased did not contact her over phone, for long time, on 13.10.2010, she came to the house of deceased and found the door locked. After enquiring the neighbours, she has given a complaint before the respondent police on 18.10.2010. She has identified the stolen jewels at Police Station. P.W.2 is the husband of P.W.1, he has written the complaint given by P.W.1, on 18.10.2010; P.W.3 is the Village Administrative Officer, before whom A1 said to have appeared and given extra judicial confession. According to him, he has not written the confession given by A1, he took A1 to the Police Station along with the special report and produced him before the respondent police, here A1 has given a statement which was reduced into writing by the police. P.W.4, is the neighbour of the deceased, according to him, he was informed that the deceased was murdered; P.W.5 also a neighbour, he has stated that, he does not know anything about the murder, he was only informed that the deceased was murdered, and he does not know who were all resided in the house of the deceased; P.W.6 is the Doctor, who conducted postmortem autopsy and given postmortem report; P.W.7 is the Head Constable, who identified the body for postmortem; P.W.8 is the witness to the arrest and recovery, however, he turned hostile; P.W.9 is the Investigating Officer, registered the complaint for woman missing, arrested A1, recovered Material Objects; P.W.10 is the Scientific Officer, working in the Forensic Lab, Chennai, who conducted superimposition test for the deceased and given an opinion that the body is that of the deceased; P.W.11, second Investigating Officer, he arrested A2 and recovered M.O.8, gunny bag; P.W.12 is the Tashidlar, who has given free TV to the deceased under the Government Scheme; P.W.13, Inspector of Police, completed the investigation and filed the final report.

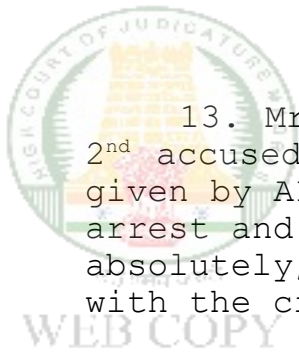
9. The above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false, however, they were not examined any witness nor marked any documents.



10. Considering those materials, the trial Court convicted all the accused as stated in the first para of Judgment. Now, challenging the conviction and sentence, the appellants are before this Court with these appeals.

11. Mr.V.Kathirvelu, learned Senior Counsel, appearing for A1 and A3, would submit that it is a case of circumstantial evidence, and the prosecution did not prove any one of the circumstances relied upon by them. According to the learned Senior Counsel, the occurrence said to have taken place on 27.03.2010, and the complaint has been filed only on 18.08.2010, nearly a month after the occurrence. Thereafter, on 02.09.2010, A1, said to have surrendered before P.W.3 / Village Administrative Officer, given extra judicial confession, based on that, the body was recovered and jewels worn by the deceased were recovered. However, P.W.3, has clearly stated that he has not recorded the extra judicial confession, he only took A1, to the Police Station along with the Special Report / Ex.P.23, where the accused given a confession before P.W.9, Investigating Officer and the police only recorded the statement. In the above circumstances, the alleged extra judicial confession given by A1 was not proved by the prosecution. That apart, there is a serious doubt regarding recovery of body. As per the evidence of P.W.3, observation mahazar and rough sketch, the body said to be found in a channel near Kalvettankudi, but, P.W.9, the Investigating Officer, in his cross-examination, has stated that the body was found in a sewage channel, near the house of the deceased. So far as recovery of stolen articles is concerned, according to the prosecution, based on the disclosure statement of A1, the jewels were recovered from one Raja @ Vembadimuthu at Tirunelveli Town, but he was not examined. That apart, the stolen jewels were also not identified by P.W.1, before the Court. According to P.W.1, she identified the jewels only in the Police Station, thereafter, she has taken the jewels. A1 and A3 are stated to be the tenants under the deceased, and there is no materials available on record to show that after the occurrence, they were absconding. In the said circumstances, the prosecution has failed to prove the case beyond any reasonable doubt and the trial Court, without considering those circumstances, erroneously convicted the accused.

12. The learned Senior Counsel further submitted that, from the evidence of P.W.3, it could be seen that A1 appeared before him, and on his confession, P.W.3 saw the dead body first, thereafter, he took him to the police station, where, A1 given a statement that was recorded by the police, from that statement, other recoveries were made. Admittedly, at that time of giving the statement, A1 was not arrested and he was not under the custody of police. Hence, the statement of the accused given before the police will fall under Section 25 of the Evidence Act, and the recovery based on the above said disclosure statement will not come within the purview of Section 27 of the Evidence Act. Hence, recovery cannot be accepted.



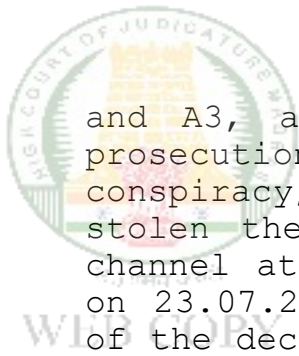
13. Mr.S.Sivasubramanian, the learned counsel appearing for the 2nd accused would submit that the alleged extra judicial confession given by A1, was not been proved by the prosecution. That apart, the arrest and recovery witnesses / P.W.8 also turned hostile, therefore absolutely, there is no materials available on record to connect A2 with the crime.

14. Mr.Thiruvadikumar, the learned Additional Public Prosecutor appearing for the State would vehemently contend that, admittedly, A1 and A3 are tenants under the deceased and they were living in a part of the house. P.W.4 and P.W.5, who are the neighbours of the deceased, have initially given a statement that both the accused were found missing from the date of the occurrence, but, turned hostile during trial, unfortunately, they were not treated as hostile witness. After arrest, A1 has voluntarily given a confession, based on the disclosure statement, the jewels were recovered. P.W.3 / Village Administrative Officer is the witness to the recovery of jewels that was identified by P.W.1, daughter of the deceased, in the Police Station. Thereby, the prosecution has proved the recovery. Even though, the person, from whom the jewels were recovered, was not examined, the available evidence and record clearly proved the recovery. In respect of recovery of dead body, there is some minor discrepancies in the evidence of P.W.9, the Investigating Officer, however the evidence of P.W.3, Observation Mahazar and Rough Sketch clearly show that the body was recovered from the sewage channel near Kalvettankudi, the minor discrepancies in his evidence, no way affect the prosecution case, as the body was identified, on the confession of the accused.

15. The learned Additional Public Prosecutor would further submit that, from the perusal of Ex.P24 / extra judicial confession given by A1 before P.W.3 / VAO would show that, P.W.3, alone recorded the confession of the A1, thereafter, he produced the accused before P.W.9, along with Ex.P23, special report and Ex.P.24. Thereafter, A1 was arrested and recovery was made. These circumstances formed a complete chain unerringly prove the guilt of the accused. The learned Additional Public Prosecutor further submitted that, it is a case of murder for gain, when the deceased was alone in the house, A1 and A3, her tenants along with A2 committed the murder and stolen the jewels. Even though there are some minor discrepancies in the prosecution witnesses, it is not materially affect the prosecution case. The trial Court considering those circumstances, has rightly convicted the accused.

16. We have considered the rival submissions and perused the materials available on record carefully.

17. It is a case of circumstantial evidence. The prosecution strongly rely upon two circumstances, the extra judicial confession said to have given by A1 to P.W.3, and the recovery of stolen jewels on the disclosure statement of A1. Admittedly, A1



and A3, are the tenants under the deceased. According to the prosecution, A1 and A3 along with A2, a friend of A1, hatched a conspiracy, in pursuance of the same, they have committed murder, stolen the gold jewels and disposed the body near by the sewage channel at Kalvettankudi. The occurrence said to have taken place on 23.07.2010, thereafter, only on 13.10.2010, P.W.1, the daughter of the deceased, who was working as teacher somewhere else, came to the house of the deceased, and found her missing, searched for a while, and on 18.08.2010, filed a complaint before the respondent police. According to the prosecution, on 02.09.2010, A1, appeared before P.W.3, and given an extra judicial confession, and the body was identified, based on his disclosure statement, the stolen articles were recovered. From the perusal of Village Administrative Officer / P.W.3 testimony, it could be seen that, on 02.09.2010, the accused appeared before him at about 8.00 a.m., and confessed his guilt. Thereafter, A1 took P.W.3 to the place where the body was disposed and found the body. Immediately, P.W.3, took him to the police station, where, A1, has given a confession statement, which was recorded by the police, in which, both P.W.3 and a Village Assistant attested. It could further seen that, P.W.3 did not record the confession statement given by A1. The statement was recorded only in the police station, by the police and P.W.3 and Village Assistant attested the statement. Even in the cross-examination, P.W.3 has stated that he has only prepared Ex.P23 / special report, Ex.P24, was not recorded by him and it was recorded in the police station. Hence, it is clear that Ex.P24, is not the extra judicial confession given by A1, before P.W.3.

18. It is the contention of the learned senior counsel appearing for the accused that, recovery was made based on the statement given by A1, under Ex.P24, at that time, neither he was under the custody of the police, nor he was arrested. Hence that statement could be treated as a statement given under Section 25 of the Evidence Act, and the information given by the accused will not come under the preview of Section 27 of the Evidence Act, and any recovery made on that information cannot be valid. But that contention cannot be accepted for the reason that, admittedly, after A1 appeared before P.W.3, he took him to the police station and produced him before P.W.9 / Inspector of Police, where A1 said to have given the statement to P.W.9. Now the question is at the time of giving such statement, whether A1 was in custody of a police officer. The law is well settled that, the expression 'custody' found in Section 27, of the Evidence Act, does not mean a formal custody, and there need not be any formal arrest, as contemplated under Section 46 of Cr.P.C. Even assuming A1, was not formally arrested by P.W.9, he was for all practical purpose in the custody of police.

19. The Hon'ble Supreme Court in ***Vikram Singh & Ors., Vs. State of Punjab*** reported in **(2010 (3) SCC 56)** has held that, the formal

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arrest of the accused is not a condition precedent for recording the statement and it is sufficient that the statement given while the accused is in custody. The relevant portion of the judgment reads as follows:-

41. Mr. Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance with the aforesaid provision they could not be said to be in police custody. We see that Section 46 deals with 'Arrest how made'. We are of the opinion that word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal arrest on 15-2-2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused in an offence at the time of their apprehension on the 14-2-2005.

42. Moreover, in the light of the judgment in the Constitution Bench and the observation that the words in Section 27 "accused of any offence" are descriptive of the person making the statement, the submission that this Section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. This argument does not merit any further discussion."

20. In the Judgment in ***Dharam Deo Yadav Vs. State of U.P.*** reported in ***(2014 Cr1.L.J. 2371)***, the Hon'ble Supreme Court further held that the expression of custody appears in Section 27 of Evidence Act did not mean a formal custody, but, which includes any kind of surveillance or restriction are restraint by the police, even the accused was not formally arrested at the time when the accused gave the information. The relevant portion of the Judgment reads as follows:-

20. Section 27 of the Evidence Act explains how much of information received from the accused may be proved. Section 27 reads as follows:

"27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.



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The expression "custody" which appears in Section 27 did not mean formal custody, which includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time when the accused gave the information, the accused was, for all practical purposes, in the custody of the police. This Court in *State of Andhra Pradesh v. Gangula Satya Murthy* (1997) 1 SCC 272 held that if the accused is within the ken of surveillance of the police during which his movements are restricted, then it can be regarded as custodial surveillance. Consequently, so much of information given by the accused in "custody", in consequence of which a fact is discovered, is admissible in evidence, whether such information amounts to a confession or not. Reference may also be made to the Judgment of this Court in *A.N. Venkatesh v. State of Karnataka* (2005) 7 SCC 714. In *Sandeep v. State of Uttar Pradesh* (2012) 6 SCC 107, this Court held that it is quite common that based on admissible portion of the statement of the accused, whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the Court as to nature of recoveries and as to how they came into the possession or for planting the same at the place from where they were recovered. Reference can also be made to the Judgment of this Court in *State of Maharashtra v. Suresh* (2000) 1 SCC 471, in support of the principle."

Considering the above principles, the contention of the learned Senior Counsel cannot be countenanced.

21. However, now, we have to consider whether the prosecution has proved the recovery. According to P.W.9, Investigation Officer, based on the disclosure information of A1, that, he has pledged the jewels with one Raja @ Vembadimuthu at Tirunelveli Town and the jewels were recovered from his jewellery shop, but, the shop owner was not examined by the prosecution. P.W.3, said to be the witness to the recovery of stolen articles, but the evidence is very shaky and we find some difficulty in believing his evidence. That apart, P.W.1, daughter of the deceased, did not identify the jewels in the Court, she said to have identified the jewels only in the Police Station, according to her, the jewels were hand over to her even before the commencement of trial and the jewels were in her custody. Considering those circumstances, the prosecution has failed to prove the recovery of jewels and the jewels are belonged to the deceased.



So far as recovery of the dead body, admittedly the body was not recovered based on the disclose information of A1, even before that, P.W.3 seen the dead body and informed the police in his special report.

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22. The next circumstances relied upon by the prosecution is that, after the occurrence, all the accused are absconding which is a strong circumstance against him. A1 and A3 said to be the tenants of the deceased, P.W.4 and P.W.5, are neighbours of the deceased and prosecution relying on their evidence to show that the accused are absconding, however from the testimony of P.W.4 and P.W.5, there is nothing to show that the accused were absconding. Apart from that, even P.W.1, daughter of the deceased also did not clearly say that A1 and A3 were absconding, from the date of occurrence, there is no material available on record to show that A1 and A3 were found missing from the date of occurrence.

23. The next submissions of the learned senior counsel is that, as per the prosecution case, the body was found in a sewage channel in Kalvettankudi as per Ex.P12 / Observation Mahazar and Ex.P13 / rough sketch, and it is also seen that the dead body said to have recovered from there. However, in cross examination, P.W.9, says that the body was recovered in a sewage channel near the house of the deceased. We find some force in his submission, according to prosecution, A1 orally informed P.W.3, about disposal of the dead body, based on that, P.W.3, seen the body at Kalvettnkudi sewage channel, but, according to P.W.9, the Investigating Officer, the body was found near the house of the deceased and it also create a doubt about the prosecution story.

24. It is settled position of law that in a case based on the circumstantial evidence, the circumstances from which the conclusive guilt is to be drawn should be fully established and the facts so established should be consistent only with the hypothesis of the guilt of the accused, and it should exclude every possible hypothesis except one to be proved. The chain of evidence must be so complete, there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.

25. In ***Hanumant v. State of M.P. [A.I.R. 1952 SC 343]***, the Hon'ble Supreme Court held as follows:

"10. ... It is well to remember that in cases, where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is



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

26. The Hon'ble Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116]** held as follows:

"153.(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

(2) The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

27. In **Trimukh Maroti Kirkan vs. State of Maharashtra, [(2006) 10 SCC 681]**, the Hon'ble Supreme Court held as under:

"12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence."

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28. In a case of circumstantial evidence, the Court may infer from available evidence, which may lead to prove the guilt of the accused and the Courts have to identify the facts in the first place so as to fit the case within the parameters of a "Chain of Circumstances" and then find out the chain of events, unerringly proving the guilty of the accused beyond reasonable doubt.

29. The Hon'ble Supreme Court in **Suresh v. State of Haryana [(2018) 18 SCC 654]**, held as follows:

"42. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the Courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of 'chain link theory' and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the 'chain link theory' since **Hanumant v. State of M.P. [AIR 1952 SC 343]**, which of course needs to be followed herein also."

30. Following those principles, we are of the considered view that, the circumstances relied upon by the prosecution do not have definite tendency unerringly pointing out the guilt of the accused and the appellants/Accused cannot be convicted based on that. In these circumstances, the accused are only entitled for acquittal.

31. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/Accused, by the learned III Additional District and Sessions Judge, Tirunelveli, Tirunelveli District in S.C.No.397 of 2015, dated 29.06.2018, is hereby set aside. The Appellants/Accused are acquitted from all the charges levelled against them. Fine amount, if any, paid by the Appellants/Accused shall be refunded to them. Bail bond executed by



them also shall stand cancelled. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Principal District Judge,
Tirunelveli.
- 2.The III Additional District and Sessions Judge,
Tirunelveli,
Tirunelveli District
- 3.The Judicial Magistrate No.I,
Tirunelveli.
- 4.The Chief Judicial Magistrate,
Tirunelveli.
- 5.The District Collector,
Tirunelveli.
- 6.The Director General of Police,
Mylapore, Chennai.
- 7.The Superintendent of Police,
Tirunelveli.
- 8.The Officer Incharge,
Special Prison for Women,
Trichy.
- 9.The Superintendent,
Central Prison, Trichy.

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10.The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.

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

Copy to

The Section Officer,
Criminal Records,
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JUDGMENT MADE IN

Crl.A.(MD)No.526 of 2018 and
Crl.A.(MD)Nos.110 & 144 of 2019 and
Crl.M.P(MD) No.4943 of 2021
29.10.2021

NA (CO)
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