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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.03.2022

DELIVERED ON : 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A. (MD)Nos.41 and 326 of 2020

1.Raja

2.Mareeswaran ... Appellants in Crl.A.(MD)No.41 of 2020
/ Accused Nos.2 and 3

Arunachalam ... Appellant in Crl.A.(MD)No.326 of 2020
/ Accused No.1

-Vs-

State rep by

The Inspector of Police,
Erwadi Dargah Police Station,
Ramanathapuram District.

(In Crime No.97 of 2012) ... Respondent in both Crl.As. /
Complainant

COMMON PRAYER: Criminal Appeals filed under Section 374 of Cr.P.C.,
praying to set aside the conviction and sentence imposed by the Fast
Track Mahila Court, Ramanathapuram in S.C.No.112 of 2014 on
04.01.2020 as against the appellants / accused Nos.2, 3 and 1
respectively.

For Appellant No.1: Mr.M.Jothibas
(in Crl.A.(MD)No.41 of 2020)

For Appellant No.2: Mr.Muthusaravanan,
For Mr.M.Jegadeesh Pandian
(in Crl.A.(MD)No.41 of 2020)

For Appellant : Mr.M.Jegadeesh Pandian
(in Crl.A.(MD)No.326 of 2020)

For Respondent: Mr.T.Senthil Kumar,
Additional Public Prosecutor.
(in both Crl.As.)



COMMON JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

These Criminal Appeals have been filed by the appellants / accused 1 to 3, aggrieved over the conviction and sentence, dated 04.01.2020, made in S.C.No.112 of 2014, by the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram.

2.The brief facts of the prosecution case are as follows:-

(i)The deceased, namely, Faritha was aged about 62 years. She was residing alone in her house at the village called as 'Kattupallli'. She has also let out a house surrounding her bungalow to the accused 1 to 3 and 6. The accused 1 to 3 and 6 were small time fish vendors. As they have not earned any benefit in their business, they used to borrow small amounts from the deceased. Coming to know about the wealth of the deceased, they decided to commit theft of the jewels from the deceased. Accordingly, they conspired together on 01.07.2012 and trespassed into the house of the deceased on 04.07.2012 at about 4.30 a.m. The accused 1 and 2 caught hold the hands and legs of the deceased and the third accused pressed the pillow on her face. As a result, she died. Thereafter, they committed theft of four bangles, two ear-studs and a sum of Rs.1900/-.

(ii)When the matter stood thus, the first accused on 08.07.2012 at about 02.00 p.m., while P.W.1 Village Administrative Officer was in his office along with P.W.2 appeared before him and confessed to the crime. P.W.1 recorded the confession of the first accused, which is marked as Ex.P.1, that was also signed by P.W.1. P.W.1 took the first accused to the house of the deceased at about 04.30 p.m., and at that time, P.W.4 and P.W.5 were present. Thereafter, P.W.1 took the first accused to the police station and gave Ex.P.3 complaint. While confessing the crime, the first accused has handed over two bangles M.O.1 series to P.W.1, which were also handed over to the police.

(iii)P.W.18 Investigation Officer received the complaint from P.W.1, registered the case in Crime No.97 of 2012 for the offences punishable under Sections 457, 380 and 302 of IPC, prepared First Information Report Ex.P.19, arrested the first accused and recorded his confession. Thereafter, he went to the place of occurrence, prepared observation mahazar and rough sketch Ex.P.20, also seized the pillow and recorded the statement of the witnesses. Thereafter, he gave a requisition to P.W.14 Tahsildar to exhume the body, which was buried on 05.07.2012. On 09.07.2012, the body was exhumed.



(iv)The Medical Officer P.W.13 conducted autopsy, issued postmortem certificate Ex.P.16 and opined that as the body was fully decomposed, he could not give any definite opinion, as to the cause of the death. His final opinion is marked as Ex.P.17.

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(v)P.W.18 in continuation of the investigation, arrested the accused 2 and 3 on 12.07.2012 at 13.00 hours, recorded the confession statement of the third accused and also seized a jimiki. In pursuance of the same, he recorded the statement of the second accused, also seized earring from his shirt pocket under the mahazars. Thereafter, he has arrested the accused 4 and 5 at about 21.00 hours in the bus stand, recorded their confession and seized the gold bangles, forehead pendent, ear chain and dollar from their shirt pocket. On 14.07.2012 he has arrested the sixth accused, recorded his confession and seized one bracelet. After completing the investigation, he laid a final report against the accused.

3.The accused 1 to 3 and 6 were charged for the offences punishable under Sections 120(b), 449, 451, 454 and 380 (3 counts) of IPC for conspiring together to steal the ornaments from the deceased, for allegedly trespassing into the house of the deceased and for stealing the jewels worth about Rs.75,000/-. The charges referred to above did not contain the time and place. It is the specific charge of the prosecution that on 04.07.2012 at about 04.30 a.m., the accused 1 to 3 entered into the house of the deceased and caused suffocation to the deceased with the use of pillow. Therefore, the accused 1 to 3 were charged for the offence punishable under Section 302 r/w 34 of IPC. The accused 4 and 5 were charged for receiving the stolen jewels for the offence punishable under Section 411 of IPC.

4.Before the trial Court, on the side of the prosecution, P.W.1 to P.W.18 were examined, Exs.P.1 to P.22 and M.O.1 to M.O.10 were marked. On the side of the appellants, none was examined and no document was marked. On questioning under Section 313 of Cr.P.C., the accused denied charges.

5.Based on the evidences and materials, the trial Court had found the accused 1 to 3 guilty. It, however, acquitted the accused 4 to 6. The trial Court, mainly relying upon the alleged extra judicial confession of the first accused and seizure of certain jewels, convicted and sentenced the accused 1 to 3 as stated below:-

IPC	Imprisonment	Fine	Default
120(b)	2 years R.I.	-	-
449	10 years R.I	Rs.1000	3 months R.I
451	7 years R.I	Rs.1000	3 months R.I
454	10 years R.I	Rs.1000	3 months R.I



380	7 years R.I	Rs.1000	3 months R.I
302 r/w 34	Life	Rs.2000	6 months R.I

The trial Court set off the period of sentence already undergone by the appellants / accused under Section 428 of Cr.P.C., and ordered that the above sentences shall run concurrently.

6.Assailing the same, the present Criminal Appeals have been filed by the accused 1 to 3.

7.The learned counsel appearing for the appellants would submit that absolutely there is no evidence to base conviction for the said offences. The dead body of the deceased was buried on the very next day i.e., 05.07.2012 and no one has raised any doubt about the death. Therefore, the alleged theory of the homicidal death is nothing but imagination of the prosecution and the Medical Officer has not given any opinion as to the cause of the death. Hence, it is the contention of the appellants that the prosecution has not even established the homicidal death of the deceased. Therefore, convicting the accused persons for murder without establishing the homicidal death of the deceased is not proper. That apart, the alleged extra judicial confession given by the first accused to P.W.1 is attached with artificiality and suffered from serious infirmities, which renders it highly doubtful. Therefore, merely on the basis of such confession, the conviction cannot be rendered. Moreover, the witnesses examined by the prosecution have not spoken anything about the complicity of the accused.

8.He would further submit that the evidence of P.W.1 is highly artificial and P.W.4 neighbour of the deceased and other witnesses have not spoken anything about the accused. P.W.7 and P.W.8, who allegedly stayed with the deceased on the date of occurrence, have never stated anything about the alleged trespass by the accused or anyone into the house. The villagers, including the son of the deceased had treated the death of the deceased as a natural death and buried the dead body. P.W.5 son of the deceased has not even spoken about the jewels of his mother and the ownership of the alleged jewels has also not been established. Hence, it is the contention of the appellants that the prosecution has foisted the case against the accused persons without any basis and the charges framed against the accused did not contain any details as to the time and place etc. Therefore, the entire prosecution version is highly doubtful and the accused are entitled to acquittal.

9.The learned Additional Public Prosecutor appearing for the respondent would submit that P.W.1 has spoken about the extra judicial confession as given by the first accused. The jewels were seized from the accused persons, which has not been explained by the accused. The entire prosecution case depends upon the so-called extra judicial confession given to P.W.1. Therefore, the prosecution



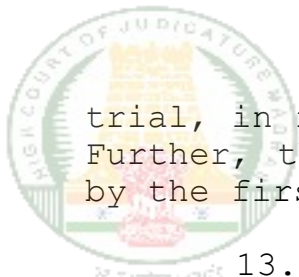
has established the case beyond all reasonable doubt against the accused.

10. We have heard the learned counsel on either side and carefully perused the materials available on record.

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11. P.W.4 is the neighbour of the deceased and P.W.5 is the son of the deceased. He was working in Riyadh. After hearing the death news of his mother, he came to the place on 05.07.2012 and on 08.07.2012, P.W.1 Village Administrative Officer brought the first accused to the house of the deceased and informed about the confession of the first accused. It is the specific evidence of P.W.7 that on 04.07.2012 she was residing in the same house, where the deceased died. It is curious to note that P.W.7 and P.W.8 used to stay with the deceased in the night hours. On the date of occurrence also, they were staying with the deceased and in the morning, they went to their job as usual. Therefore, the evidence of P.W.7 and P.W.8 makes it very clear that the deceased was not alone in the house. In such view of the position, the accused entering into the house of the deceased at early morning at about 4.30 a.m., by breaking into the house of the deceased is highly doubtful. There is no material placed on record to show that the house of the deceased was either broken or opened. The evidence of P.W.7 and P.W.8 clearly indicates that they were present in the same house, where the deceased died on the date of alleged occurrence. If really the deceased was done to the death by pressing her face using the pillow, there should have been a struggle mark, which has not been noticed by anyone. Therefore, P.W.7 and P.W.8 leaving the house casually for their job itself creates serious doubt about the charge against the accused at the relevant point of time. All the villagers, including P.W.5 son of the deceased thought that it was natural death and buried the body and P.W.5 has also never suspected anyone.

12. The alleged so-called extra judicial confession came into existence only on 08.07.2012. As per the prosecution, it is the evidence of P.W.1 that the first accused appeared before him at about 02.00 p.m., while he was in office and stated that as his conscience did not permit him, he wanted to divulge the truth about the crime. If such confession is given by the accused, the immediate reaction of P.W.1 would be to record the confession and hand over the accused to the police. Whereas, P.W.1 has conducted preliminary enquiry by taking the first accused to the house of the deceased for ascertaining the alleged crime, thereafter, handed over the accused to the police by giving a complaint. Such conduct of P.W.1 is against the normal human conduct. It is not domain of P.W.1, Village Administrative Officer, to conduct investigation to ascertain the facts. Further, for the alleged confession given to P.W.1, he should have prepared atleast proper record and the necessary copies should have been sent to the higher officials, <https://www.telangana.gov.in/telecom> been done. Having spoken about this fact, during the



trial, in fact he has identified the third accused as first accused. Further, the conduct of handing over the bangles casually to P.W.1 by the first accused is also against the normal human conduct.

13.The law was set in motion on the basis of the complaint lodged by P.W.1 based on the extra judicial confession. The circumstance relied upon by the prosecution against the accused is only seizure of certain jewels. It is the evidence of P.W.18 Investigation Officer that at the moment of arresting the accused persons, all the jewels were recovered from their shirt pockets. Therefore, the story of the prosecution that the accused persons were carrying jewels in their pockets till their arrest, is also highly improbable and unbelievable.

14.It is also to be noted that though P.W.5 son of the deceased was in Riyadh, he reached his house on 05.07.2012. He never identified the jewels before the police and has not stated anything about any theft or etc in his house. The immediate reaction of any son would be to check his house properly, when his mother, who was staying alone, died unnaturally. However, he did not suspect anything and he took it as a natural death and buried the dead body of his mother on 05.07.2012. Therefore, his evidence also clearly indicates that he did not know about the jewels allegedly stolen by the accused and he never identified any of the jewels allegedly recovered from all the accused.

15.P.W.2, who is the witness to the extra judicial confession, stated in his cross-examination that he has identified the first accused only after his identity was shown by P.W.1 during the trial. He also stated in his cross-examination that only first part of the confession was recorded in his presence and while recording the second part by P.W.1 Village Administrative Officer, he went to drink some water. His evidence also creates serious doubt about the alleged extra judicial confession. His evidence also clearly shows that there are lot of movements in and around the house, where the deceased resided.

16.P.W.9 also in his evidence has stated that the body was buried taking it as a natural death. The evidence of the Medical Officer and the postmortem certificate do not indicate any injuries on the body and the reason for the death could not be given by the Doctor, as the body was fully decomposed. The fact as to whether the deceased was in possession of the said stolen articles, has also not been established. Therefore, merely on the basis of the alleged seizure by the Investigation Officer at the time of arresting the accused from their shirt pockets, it is highly difficult for us to come to the conclusion that the seized jewels are owned by the deceased and the same were stolen.



17. When the theft of jewels has not been established, merely because of seizure of certain articles from the accused, there cannot be any presumption that those articles are stolen articles. Therefore, the presumption under Section 114 (a) of Indian Evidence Act, 1872 cannot be applied in this case. To apply the above presumption, it must be established that there was a theft, then the Court can presume that the accused, who is in possession of the stolen goods, soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

18. Here in this case, the very theft of the jewels from the house itself is not established and no evidence available on record to show that the deceased was owning the jewels and the same were stolen. Further, there is no material on record to show that the accused persons trespassed into the house of the deceased either by breaking or opening the lock or by some other means, whereas the evidence of P.W.7 and P.W.8 indicates that they were present in the house on the date of death of the deceased. Therefore, the theory of the prosecution that the deceased was killed at 04.30 a.m., is also highly doubtful.

19. Considering these aspects, we arrive at a definite conclusion that there is absolutely no material to convict the accused persons. The alleged extra judicial confession to P.W.1 is also highly doubtful. The alleged extra judicial confession and the First Information Report had been reached to the Court at about 11.00 p.m., on 08.07.2012 with delay of more than four hours, which is also not explained by the prosecution. We, therefore, find that the trial Court was simply carried away by the alleged extra judicial confession without even proper appreciation. The Trial Court has not even framed the charges in tune with the mandatory provisions as contained in Chapter 17 Section 212 of Cr.P.C., which deals with particulars as to time, place and person. The charge shall contain such particulars as to the time and place of the alleged offence. Except one charge, the trial Court casually framed the charges without even putting the accused to notice of the particulars as to the time and place etc.

20. We express our regret and displeasure over in the manner in which the trial Court proceeded with the criminal trial. In every criminal trial, the role of the learned Sessions Judge is very very important. The learned Sessions Judge should always participate in the trial to see that the trial is concluded by following the mandatory provisions of law. Treating the sessions trial as a petty cases, casually framing the charges and rendering findings without adverting to such procedure by the trial Judge is highly deplorable. In such view of the matter, we have no other option except to hold that the conviction and sentence rendered by



entitled to benefit of doubt.

21. In the result, the Criminal Appeals stand allowed and the conviction and sentence imposed on the appellants / accused, by judgment dated 04.01.2020, made in S.C.No.112 of 2014, on the file of the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram, is set aside. The appellants are acquitted of the charges levelled against them. Fine amount, if any, paid by the appellants shall be refunded to them. The appellants are directed to be set at liberty forthwith, if their detention is not required in connection with any other case.

Sd/-

Assistant Registrar(CS-)

// True Copy //

06/04/2022

Sub Assistant Registrar(CS)

Myr

To

1. The Sessions Judge,
Fast Track Mahila Court, Ramanathapuram.

2. The Inspector of Police,
Erwadi Dargah Police Station,
Ramanathapuram District.

3. The Superintendent, Central Prison, Madurai.
(In duplicate for communication to detenue)

4. The Judicial Magistrate No.II, Ramanathapuram.

5. The District Collector, Ramanathapuram.

6. The Director General of Police, Chennai.

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

+1 CC to M/s.G.M. LAW OFFICE, Advocate (SR-16762[F] dated
06/04/2022)

Common Judgment delivered in
CRL.A. (MD)Nos.41 and 326 of 2020
06.04.2022

sp (CO)

TR(06.04.2022) 8P 10C