



WEB COPY

Crl.A(MD)No.85 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

CRL.A.(MD)No.85 of 2020

and

CrI.M.P.(MD) No.4722 of 2022

Selvi

.. Appellant / Accused

Vs.

The State, rep. by

The Inspector of Police,

Madukoor Police Station,

Thanjavur District.

(In Crime No.82 of 2016)

.. Respondent / Complainant



Crl.A(MD)No.85 of 2020

WEB COPY

PRAYER: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to call for the judgment, dated 03.01.2020 made in S.C.No.209 of 2016, on the file of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur and set aside the same and allow this Criminal Appeal.

For Appellant	: Mr.M.S.Jeyakarthik
For Respondent	: Mr.A.Thiruvadi Kumar
	Additional Public Prosecutor

JUDGMENT

J. NISHA BANU, J.

AND

N. ANAND VENKATESH, J.

This Criminal Appeal has been filed against the Order and Judgment of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, made in S.C.No.209 of 2016, dated 03.01.2020, convicting and sentencing the appellant in the following manner :



Crl.A(MD)No.85 of 2020

WEB COPY

Sl.No.	Provisions under which convicted	Sentence of imprisonment and fine amount
1.	302 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) and in default, to undergo one year simple imprisonment.
2.	201 IPC	To undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) and in default, to undergo one year simple imprisonment.
3.	404 IPC	To undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) and in default, to undergo three months simple imprisonment.

2. The case of the prosecution is that the deceased Kiliammal, aged about 85 years, did not have any children and she was maintained by one Singadurai (P.W.2). Since P.W.2 was residing at Chennai, the deceased was taken care by his relative P.W.1 and he used to send the expenses every



Crl.A(MD)No.85 of 2020

WEB COPY

month. The further case of the prosecution is that the appellant noticed the deceased wearing gold jewellery and hence, decided to steal the same. On 10.3.2016, at about 9.30 a.m., the appellant volunteered to take the deceased to the hospital and made her come to her house. She was fed by the appellant and the deceased was taking rest by lying down. At that point of time, the appellant demanded from the deceased the gold ornaments and when it was not given, the appellant is said to have attacked the deceased with a wooden stick (M.O.7) on her head and caused her death. Thereafter, the appellant is said to have taken away all the golden jewellery. The jewellery that was stolen, was misappropriated. The deceased was taken in a gunny bag and the dead body was concealed.

3. According to the prosecution, this incident should have taken place between 9 am on 10.03.2016 to 7.30 am on 11.03.2016. The dead body of the deceased was seen by P.W.4 and P.W.5 on 11.03.2016 at about 7.30 am and they informed the same to P.W.1. P.W.1, who was searching for the deceased, was enquiring in the hospital and in the nearby places and at



Crl.A(MD)No.85 of 2020

WEB COPY

this point of time, P.W.4 and P.W.5 informed her about the dead body of the deceased. This was informed to P.W.2 and the information was also sent to the police. Within half-an-hour, the police came to the place where the dead body was found. Thereafter, the body was sent for post-mortem. A complaint was prepared by one Veerapandian and P.W.1 went to the police station around 2.30 p.m. and gave the complaint (Ex.P1).

4. The FIR was registered by P.W.20 in Crime No.82 of 2016 (Ex.P10). The investigation was taken up by P.W.21 and on completion of investigation, the final report was filed before the Judicial Magistrate, Pattukottai. The case was committed to the Principal District and Sessions Court, Thanjavur and it was made over to the Court below.

5. The Court below framed charges against the appellant for the offence under Sections 302, 404 and 201 of IPC. The prosecution examined P.W.1 to P.W.21 and marked Ex.P1 to Ex.P19 and M.O.1 to M.O.13 were identified and marked. The incriminating materials collected during the



Crl.A(MD)No.85 of 2020

WEB COPY

course of trial was put to the appellant while she was questioned under Section 313 (1) (b) Cr.P.C. and the same was denied as false.

6. The Court below on considering the facts and circumstances of the case and on appreciation of evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and convicted and sentenced the appellant in the manner as stated supra. Aggrieved by the same, the present Criminal Appeal has been filed before this Court.

7. Heard Mr.M.S.Jeya Karthik, learned counsel appearing on behalf of the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing on behalf of the respondent.

8. We have carefully gone through the materials available on record and considered the submissions made on either side.



WEB COPY



Crl.A(MD)No.85 of 2020

9. The case of the prosecution hinges upon circumstantial evidence. The circumstances relied upon by the prosecution are:

a) The death of the deceased is homicide as spoken to by the Doctor P.W.15 through whom the post-mortem report was marked as Ex.P8.

b) The motive behind the crime as spoken to by P.W.1.

c) The extra judicial confession given by the accused to P.W.10.

d) The last seen theory as spoken by P.W.3 and P.W.16.

e) Arrest and recovery spoken by P.W.10, P.W.12 and P.W.13 and substantiated by Ex.P5 to Ex.P7 and M.O.1 to M.O.5.

f) The evidence of P.W.14 who saw the accused carrying the dead body in a gunny bag with the help of her son and



Crl.A(MD)No.85 of 2020

WEB COPY

g) The recovery of the stolen jewels, which has not been explained by the accused and the presumption under Section 114 (a) of the Indian Evidence Act.

10. Insofar as the first circumstance is concerned, the dead body was identified by P.W.4 and P.W.5 on 11.03.2016 at 7.30 a.m. Based on the complaint given by P.W.1, P.W.20 registered the FIR and the investigation was taken up by P.W.21 on 11.03.2016 at about 3.45 p.m. The Investigation Officer went to the place where the dead body was found and called for the assistance of the scientific experts and sniffer dog. The dead body was taken to the General Hospital, Pattukotai and the post-mortem was conducted by P.W.15 and the post-mortem report was marked as Ex.P8. The injuries recorded in the post-mortem report are extracted hereunder :-

"1) Laceration parieto occipital region 8 x 3 x 2 cms.

2) Irregular fracture of occipital bone 3 x 3 cms.

3) Bleeding (clotted) through both ears.



Crl.A(MD)No.85 of 2020

WEB COPY

4) Dark brown discolouration of neck anterior portion and upper chest present."

11. A final opinion was given to the effect that the death should have been caused due to shock and haemorrhage sustained by head injury.

12. It is clear from the above that homicide was the cause of the death.

13. In a case based on circumstantial evidence, motive assumes a great significance. The prosecution has relied upon the evidence of P.W.1 to support its theory on motive. P.W.1 had given the complaint (Ex.P1) on 11.03.2016 at about 3.00 p.m. On carefully going through the complaint, there is not even a whisper about the deceased wearing gold ornaments and the same missing from her. It should be borne in mind that the prosecution is attempting to project this case as a murder for gain. Hence, the only motive for murdering the deceased is the gold jewelleryes that is said to have



Crl.A(MD)No.85 of 2020

WEB COPY

been worn by her when she left the house. There is no mention about this crucial factor in Ex.P1. This aspect on the missing jewels comes up for the first time only when P.W.1 was put in box.

14. The accused is said to have gone to the Village Administrative Officer - P.W.10 and had given an extra judicial confession and which was submitted as a report Ex.P4 to the Inspector of Police, Madukkur Police Station. The accused is said to have appeared in the office of the V.A.O on 15.03 2016 at about 7.00 a.m. and given the confession. There is no difficulty in acting upon the extra judicial confession. However, it must sound natural and it must convince the Court that the accused did give a voluntary confession to P.W.10. P.W.10 in his evidence states that the office opens only at 10.00 a.m. and whereas, he along with his Assistant were present at his office on 15.03.2016 at 7.00 a.m. when the extra judicial confession is said to have been made and it is not known as to why they were present so early in the office on that day. Ex. P16 is the confession that was recorded from the accused by the Assistant of P.W.10.

10/22



Crl.A(MD)No.85 of 2020

WEB COPY

It is quite surprising that this document was not marked through P.W.10 and it was actually marked through P.W.21, who is the Investigation Officer. Therefore, the contents of the so-called confession statement was not able to be confronted through P.W.10. The accused is not known to P.W.10 and it is quite unnatural that the accused had voluntarily gone to a person, who is not known to her and had confessed to a murder.

15. The next crucial factor that has been relied upon as a circumstance is the arrest and recovery. According to P.W.21, the accused was arrested on 15.03.2016 after getting the information from P.W.10 that the accused had confessed to the commission of crime. The confession of the accused was recorded between 8.45 a.m. to 10.45 a.m. and the admissible portion was marked as Ex.P5. Based on the same, M.O.1 to M.O.3 were recovered. Admittedly, the confession was recorded in the presence of P.W.10 and his Assistant. Surprisingly, P.W.10 does not state anything in his evidence about the recovery when he was examined on 23.02.2017. P.W.10 is recalled on 03.03.2017 and thereafter Ex.P5 and the



Crl.A(MD)No.85 of 2020

WEB COPY

seizure mahazar - Ex.P6, M.O.1 to M.O.3 were marked. That apart, through seizure mahazar Ex.P7, M.O.4 and M.O.5 were also marked. These Material objects were introduced through P.W.12 and P.W.13.

16. Before going into the evidence of P.W.12 and P.W.13, this Court has to make a comment on Ex.P14 and Ex.15 which were the receipts relied upon for proving M.O.4 and M.O.5 being pledged with P.W.12, who in turn, had kept it in the locker in a private bank whose manager was examined as P.W.13. These two documents did not form part of the final report. These two documents were not marked through P.W.12 and P.W.13 and all of a sudden it came into existence when P.W.21, Investigation Officer was examined on 23.08.2017. When these two documents were marked, serious objections were made on the side of the accused and the court below recorded the objections and in spite of the same, it was not even dealt with at the time of passing the judgment.



Crl.A(MD)No.85 of 2020

WEB COPY

17. P.W.12 speaks about the brother of the accused (P.W.11) pledging the jewels and receiving a sum of Rs.31,000/- (Rupees Thirty One Thousand only). He specifically states that P.W.21 had collected the receipts pertaining to M.O.4 and M.O.5. However, P.W.21 in his evidence speaks about P.W.11 handing over these receipts. P.W.11 did not support the case of the prosecution and he was treated as hostile. This witness is said to have taken P.W.21 to the private bank locker. P.W.13 states that P.W.12 along with P.W.10 and P.W.21 had come to the bank and he showed the locker and came out of the room. He did not see M.O.4 and M.O.5 taken out of the locker.

18. P.W.10 spoke about the recovery of M.O.4 and M.O.5 only after he was recalled. He states that the jewellerys M.O.1 to M.O.5 were returned to P.W.1 after recovery and P.W.1 does not even talk about the same in his evidence. P.W.10 was not even able to say where the private bank is situated and he states that he was sitting inside a jeep.



Crl.A(MD)No.85 of 2020

WEB COPY

19. A very strange procedure was followed by the court below by permitting M.O.6 and M.O.7 to be marked at the time of re-examination of P.W.10. These two material objects are the gunny bag in which the deceased is said to have been taken by the accused and the wooden stick with which the deceased is said to have been attacked.

20. On an overall assessment of the manner in which the arrest and recovery have taken place in this case, it becomes unreliable and doubtful and every time, the prosecution has improved its case. This doubt gets even more stronger since P.W.1 in the complaint has not even spoken about the gold jewels worn by the deceased and which is said to have gone missing.

21. In view of a serious doubt on the very recovery of the Material Objects, the presumption under Section 114(a) of the Indian Evidence Act will not apply to this case and the judgment relied upon by the learned Additional Public Prosecutor in **Gulab Chand Vs. State of**



Crl.A(MD)No.85 of 2020

WEB COPY

Madhya Pradesh reported in **1995 (3) Supreme Court Cases - 574**, will not apply to the facts of the present case.

22. Insofar as the last seen theory is concerned, the prosecution is relying upon the evidence of P.W.3 and P.W.16 read along with the evidence of P.W.14. P.W.3 is said to be the neighbour of the deceased. She states that the deceased informed her on 10.03.2016 at about 9.00 a.m. that she is going along with the accused to the Government Hospital. After nearly 2 hours, the accused is said to have informed P.W.3 that the deceased did not come to her house and she seems to have gone alone to the hospital. During the cross-examination, P.W.3 states that except P.W.3, no one else knows about the deceased going to the hospital and the accused informing her after two hours that the deceased did not come to her house.

23. P.W.16, who is the wife of P.W.3, also talks about the deceased informing that she is going to the hospital along with the accused. When P.W.3 has made a very clear statement that except him no one else



Crl.A(MD)No.85 of 2020

WEB COPY

knows about the deceased going along with the accused to the hospital, a similar statement made by P.W.16 sounds unbelievable.

24. P.W.14 speaks about the accused travelling in a two-wheeler carrying a gunny bag along with her son on 10.03.2016 at about 7.30 p.m. Her theory about the deceased being carried in a gunny bag with a boy, aged about 13 to 14 years, sounds very doubtful and this is more so since the very recovery of the gunny bag (M.O.5) was found to be not believable.

25. In the present case, the extra judicial confession was given on 15.03.2016 and the entire recovery was completed at a break-neck speed on a single day. The recoveries that have been effected were merely make-believe ones and they do not inspire the confidence of this Court.

26. The version given by the witnesses namely, P.W.17 (Photographer), P.W.18 (Sniffer Dog Police), P.W.19 (Scientific Analyst)



Crl.A(MD)No.85 of 2020

WEB COPY

and P.W.21 (Investigation Officer) shows that the dead body of the deceased was found between 5.00 p.m. to 5.30 p.m. on 11.03.2016. Ex.P.16 which is the extra judicial confession of the accused that was recorded by P.W.10, shows that the deceased had met the accused on 10.03.2016 at 9.30 a.m.

27. The evidence of P.W.15, who is the post-mortem Doctor shows that the deceased had died 16 to 24 hours prior to 11.30 a.m. on 12.03.2016. This means that the deceased should have died only after 11.30 a.m. on 11.03.2016. He also makes it clear that there is no chance of the deceased having died 36 to 48 hours prior to 11.30 a.m. on 12.03.2016. In view of the same, the evidence of P.W.4 and P.W.5 to the effect that they saw the dead body at 7.30 am on 11.03.2016, becomes totally unbelievable. P.W.1 states that the body was sent for post-mortem at 1.00 p.m. on 11.03.2016 and this goes contrary to the evidence of P.W.7, P.W.18, P.W.9 and P.W.21, who speak about the dead body available between 5.00 to 5.30 p.m. Hence, there is a major contradiction as to when the death had actually taken place, since the story as projected by the prosecution runs



Crl.A(MD)No.85 of 2020

WEB COPY

contrary to the evidence of the post-mortem Doctor.

28. There is yet another material fact which has been completely lost sight of by the Investigation Officer. Neither P.W.1 nor P.W.2 have identified M.O.1 to M.O.5 and stated that it belonged to the deceased. They are the best persons, who should have identified the jewels and stealing the jewels is projected as a motive to the crime. Even without establishing the same, the prosecution went on an assumption that M.O.1 to M.O.5 belonged to the deceased. This material fact virtually wipes off the motive as well as the so-called recovery in the present case.

29. The last straw on the camel's back is the Investigation Officer not even preparing the sketch and observation mahazar at the house of the accused where the deceased is said to have been put to death. According to the prosecution, the deceased was killed inside the house and thereafter, the body was taken in a two-wheeler for about 2 kms., and was concealed in a pathway. It is quite surprising that the place where the actual



Crl.A(MD)No.85 of 2020

WEB COPY

crime is said to have taken place was not even visited by the Investigation Officer and the same is clear from his evidence.

30. The case of the prosecution is infested with gaping holes. The chain of circumstances gets snapped at various points and it is not complete so as to exclude the hypothesis other than the guilt of the accused. Hence, this court has absolutely no hesitation to come to a conclusion that the prosecution did not prove the case beyond reasonable doubts and the benefit of doubt must go to the accused. In view of the same, this Court has to necessarily interfere with the judgment of the trial Court and acquit the appellant from the charge faced by her.

31. In the result,

- (i) This Criminal Appeal stands allowed.
- (ii) The conviction and sentence imposed on the appellant, vide judgment and order, dated 03.01.2020, passed by the learned Sessions



WEB COPY



Crl.A(MD)No.85 of 2020

Judge, Fast Track Mahila Court, Thanjavur, in S.C.No.209 of 2016, are set aside and the appellant is acquitted of all charges.

(iii) Fine amount, if any, paid by her, shall be refunded.

(iv) Bail bond, if any, executed by the appellant and the sureties shall stand terminated.

(v) The appellant is directed to be released forthwith, unless her custody is required in connection with any other case.

(vi) Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] & [N.A.V., J.]

17.10.2022

Index : Yes/No

Internet : Yes

rm

20/22



WEB COPY



Crl.A(MD)No.85 of 2020

To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Thanjavur.
- 2.The Inspector of Police,
Madukkur Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.85 of 2020

J. NISHA BANU, J.
AND
N. ANAND VENKATESH, J.

rm

JUDGMENT MADE IN
CRL.A.(MD)No.85 of 2020

17.10.2022