



BAIL SLIP

Shyamala, Female, 32 years W/o Varadharajan Petitioner/
Appellant/Accused is released on bail of this Court Order dated
13.06.2019 made in Crl MP(MD)No.4543 of 2019 in Crl A(MD)No.12 of
2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2021

Delivered on : 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A. (MD)No.12 of 2019

Shyamala, W/o.Varadarajan ... Appellant / Sole Accused

-vs-

State Rep. by
The Inspector of Police,
Thallakulam Crime Branch Police Station,
Madurai City.
(Crime No.1321 of 2015)

... Respondent / Complainant

Prayer:- Appeal filed under Section 374(2) of Cr.P.C., to call for
the records and set aside the judgment of conviction and sentence
passed in S.C.No.166 of 2017, dated 29.11.2018, on the file of the
learned Sessions Judge, Mahalir Neethi Mandram, Madurai.

For Appellant : Mr.G.Karuppasamy Pandiyan
for Mr.R.Jenifer Bibin

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by Dr. G.JAYACHANDRAN, J.]

This Criminal Appeal is filed to set aside the judgment of
conviction and sentence passed in S.C.Nos.166 of 2017, dated
29.11.2018, on the file of the learned Sessions Judge, Mahalir
Neethi Mandram, Madurai.



2. On 20.11.2015 at 19.00 hours, Thiru.N.Kumaragurubaran of Tallakulam, Madurai, gave a written complaint to the Inspector of Police attached to D-1, Tallakulam (Crime Branch) Police Station Madurai, informing that his daughter Pavithra found dead with stab injuries at her residence in the first floor of Door No.16/35, Old Agraharam Street, Chinnachokkikulam, Madurai. Based on the complaint, a case was registered in Crime No.1321 of 2015 and taken up for investigation.

2.1. The investigation revealed that the appellant Shyamala (A-1) a tailor by profession, who used to regularly stitch clothes for the deceased along with her male friend Ramesh (A-2), a driver by profession, who was in need of money, had conspired to murder Pavithra for gain.

2.2. On 20.11.2015 at 10.30 a.m., knowing that after her mother-in-law working as Assistant in TNEB had left home for her duty and Pavithra is alone, in furtherance of the common intention to cause murder and rob, the appellant Shymala (A-1) with stitched clothes and chilli powder, her male friend Ramesh (A-2) with nylon rope and knife, went to the house of the Pavithra under the pretext of delivering stitched clothes. Pavithra offered Tea to them and was chatting with them. Suddenly, the appellant caught hold the hands of Pavithra from behind and Ramesh strangled her with a nylon rope. Since Pavithra struggled and did not die, the appellant pushed her to floor and A-2 stabbed on her neck with a knife. The knife blade gave way from its handle. Then, the appellant brought a knife from the kitchen and gave it to A-2. With that knife, while A-2 stabbed Pavithra's neck repeatedly. The knife went deep below jaw and got struck. The appellant hit Pavithra on the head with a iron knife used for peeling coconut.

2.3. Pavithra died of shock and hemorrhage particularly, due to the stab injury 2 cm x 1 cm x muscle deep 6 cm below the jaw, which passes through the underlying vessels, trachea, muscle and ends between cervical vertebra C5 and C6. And due to the cumulative effect of 6 stab injuries around the neck (3 on the right side, 2 on the left side and 1 in the middle of the neck) and cut injury measuring 2.5 cm x 1 cm x bone depth just above the outer aspect of left eyebrow.

2.4. After voluntarily causing the death of Pavithra, A-1 and A-2 removed the Krishnan dollar gold chain (19 grams) from Pavithra. Opened the wooden bureau and stolen a twisted gold chain (7 sovereigns), 3 sets of gold studs (20 grams). Ramesh (A-2) gave one set of stud, weighing 4 grams to the appellant (A-1) and took the remaining jewels with him. A-2 pledged the Krishnan dollar chain for Rs. 34,700/- at Muthoot Finance with the help of his friend by name, Pandi and rest of the jewels (a twisted gold chain and two studs) at State Bank of India, Chinnamanur Branch, with the



2.5. On 26.11.2015, A-1 and A-2 were arrested from the residence of the appellant. Based on her information, the saree and blouse, which she was wearing at the time of committing the murder and 4 grams golden stud stolen from the wooden bureau of the deceased house, was recovered from her residence. Based on the confession statement of Ramesh (A-2), the dollar chain redeemed from Muthoot Finance and the blood stained jeans pant of A-2 kept in his Room No.102, Thirupathi Lodge, where A-2 was staying for the past 5 years, were recovered.

2.6. After remanding the accused, A-2 was given custody to the Police for two days, vide order of the learned Judicial Magistrate, dated 02.12.2015. In the course of interrogation, A-2 gave his further confession and disclosed the fact that the voucher, which was recovered from his Pant relates to the jewels stolen from the house of the deceased and gave it to his friend Sumothu to pledge it at the State Bank of India, Chinnamanur Branch. On the said information, Sumothu, who was at Coimbatore, was interrogated and he was taken to the State Bank of India, Chinnamanur Branch, on 04.12.2015. The stolen jewels pledged by him were recovered in the presence of independent witnesses.

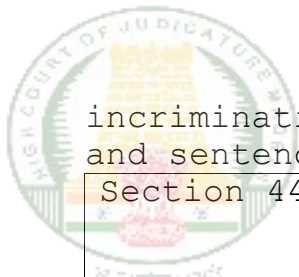
2.7. On completion of investigation, final report was filed before the learned Judicial Magistrate. Based on the documents relied by the prosecution, the learned Judicial Magistrate No.II, Madurai, committed the case to the Court of Session. The learned Principal District and Sessions Judge, took the case on file in S.C.255 of 2016 and made over the case to the Mahalir Neethimandram, Madurai, for trial.

2.8. The trial Court after furnishing copies of documents relied by the prosecution, framed charges against the appellant Shymala as A-1 and Ramesh as A-2 for offences punishable under Sections 120-B, 449, 302 read with Section 34 and 392 of I.P.C. The accused denied the charges and claimed to be tried.

2.9. Pending trial, the appellant Shyamala (A-1) absconded. Non-Bailable Warrant was issued to secure her. Since police was not able to execute the NBW, the case against her was split up and numbered as S.C.No.166 of 2017, vide proceedings of the learned Principal District Judge, Madurai, dated 27.03.2017. The trial against the co-accused Ramesh [A-2] proceeded separately.

2.10. Later, after the appellant surrendered, the trial against her commenced. To prove the charges, the prosecution examined 36 witnesses and 39 exhibits and 27 material objects were marked through the witnesses.

2.11. The trial Court, after appreciation of evidence, held the prosecution has proved the chain of circumstances



incriminating the accused persons without any break. It convicted and sentenced the appellant Shymala as below:

Section 449 IPC	To undergo 10 years rigorous imprisonment and fine of Rs.1000/-, in default, to undergo 6 months simple imprisonment.
Section 302 r/w 34 IPC	To undergo imprisonment for life and fine of Rs.1000/-, in default, to undergo 6 months simple imprisonment.
Section 392 IPC	To undergo 7 years rigorous imprisonment and fine of Rs.1000/-, in default, to undergo 6 months simple imprisonment.

The period of sentence to run concurrently and the appellant is entitled for set off the period of imprisonment already undergone, in case of any commutation of sentence lesser than the life imprisonment by the appropriate authority.

3. The sum and substance of the prosecution case as spoken through the witnesses:

P.W.1 is the father of the deceased Pavithra. He is the de-facto complainant in this case. P.W.2 is the mother-in-law of the deceased. The deceased and P.W.2 were residing at the first floor of Door No.16/35, Old Agraharam Street, Chinna Chokkikulam, Madurai. P.W.6 Selvi and her husband Sampath Kumar P.W.7 are the owners of the house and they were residing in the ground floor. Shyamala, the appellant herein is a tailor by profession. She was residing near the house of P.W.1 (father of the deceased). The appellant was doing job work for P.W.18 Nagarani, who is running a tailoring shop. The appellant used to stitch clothes for the deceased since her school days, thereby, she had good acquaintance with the deceased. Ramesh (A-2) is the male friend of the appellant. He is driver by profession. Earlier, he was running a Travels, which run into loss after the vehicle got damaged in an accident. Therefore, he was in need of huge money. Taking advantage of the acquaintance and the knowledge that the deceased will be alone, the appellant and her male friend Ramesh decided to kill Pavithra and rob her jewels.

3.1. On 20.11.2015 at 10.00 am, the appellant made call to the deceased from the P.C.O. run by K.Viswanathan (P.W.16) and got confirmed that the deceased is alone. At 10.30 am, she bought two packets of chilli powder from the shop of Mayakrishnan (P.W.19) and went to the house of Pavithra along with Ramesh, who came with knife and nylon rope. They took tea offered by Pavithra and then tried to kill her by strangulating her neck with nylon rope M.O.13. They could not kill her, then, A-2 stabbed her with a knife, the knife handle broken. The blade portion is marked as M.O.11 and the red colour handle is marked as M.O.12. Thereafter, with another knife (M.O.10) A-2 repeatedly stabbed Pavithra around her neck and the



knife got struck deep in her neck. The appellant hit the deceased on her jaw with a knife (M.O.9) used for peeling coconut.

3.2. After ensuring the death of Pavithra, they sprinkled the chilli powder. Removed the golden dollar chain (M.O.22) from Pavithra. From the wooden bureau, they took a twisted gold chain (M.O.25), 3 golden studs weighing 6 grams, 11 grams and 4 grams marked as M.O.21, M.O.26 and M.O.27 respectively.

3.3. 20.11.2015, being a Friday and Public holiday at Dubai, Mr.Jeyakumar (P.W.34), the husband of the deceased working as Engineer in Dubai messaged Pavithra to come through Skype at 12.00 noon. Pavithra did not respond to his message. At about 03.00 pm when P.W.2, the mother-in-law of the deceased called her over phone, she did not respond. Therefore, P.W.2 called P.W.6 Selvi wife of the house owner (P.W.7) residing in the ground floor and requested her to inform Pavithra that she called her and to ask her to call back. When P.W.6 went to the upstairs to inform Pavithra, she found the door unlocked and Pavithra lying in pool of blood with stab injuries. P.W.6 rushed down and informed her husband (P.W.7), who called police through 100. P.W.6 called P.W.2 and asked her to come immediately. P.W.2 got panic and called P.W.1 and informed him.

3.4. At 05.00 pm, the parents of the deceased, mother-in-law of the deceased, the sister-in-law of the deceased (P.W.1 to P.W.4) and other family members (P.W.8, P.W.9, P.W.11 and P.W.12) reached the house and found Pavithra in pool of blood with knife stabbed in her neck and multiple injuries over her face.

3.5. P.W.1 noticed the golden chain, which Pavithra was wearing found missing. P.W.1 called his friend Radha P.W.10 to accompany him to the police station. At 09.00 hours, they reached the Police Station and gave over the complaint (Ex.P.1) written by P.W.10 as dictated by P.W.1 to Tallakulam Police and F.I.R. (Ex.P.24) was registered by K.Ravi Sub-Inspector of Police (P.W.33) and taken up for investigation by the Inspector of Police Mr.Prem Anand (P.W.36).

3.6. On 20.11.2015 at 11.00 am Mr.Abdul Kapoor [P.W.5,] working in Professional courier went to first floor of Door No.16/35, Old Agraharam Street to deliver a letter to Jeyanthi (P.W.2). When he knocked the door and informed that he has come to deliver a letter, he heard the female voice saying she is taking bath and requested him to deliver the post downstairs. While he was climbing down the stairs, a dark skinned lady peeped her head out and slammed the doors harshly when he asked she herself received the post. He then delivered the post to P.W.6 and got her signature as acknowledgement for the delivery of post.

3.7. Corroborating the evidence of P.W.5, Mr.Ashraf [P.W.13] In-Charge of Professional Courier had deposed about the



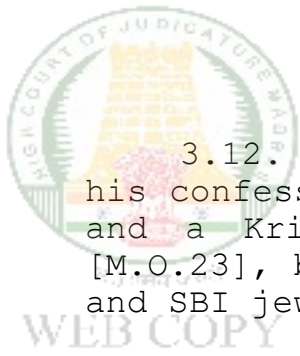
entrustment of the cover to P.W.5 to deliver at P.W.2's address and the reason why P.W.5 delivered the post to Selvi (P.W.6), which was addressed to Jeyanthi (P.W.2). As proof of delivery and acknowledgement, Ex.P.31, the voucher and tapal cover is marked.

3.8. The Inspector of Police [P.W.36], who took up the investigation, went to the scene of crime, prepared the observation mahazar (Ex.P.3), rough sketch (Ex.P.25 and Ex.P.26). Conducted inquest in the presence of Panchayatars. After taking photographs (Ex.P.14 series) of the dead body in different angles by the Police Photographer Murugaiah (P.W.25), the Police recovered two new blouses (M.O.5 and M.O.6), a shawl (M.O.7) and a brown and white stripe towel (M.O.8) all with blood stains. That apart, two packets of Sakthi Chilli Powder (M.O.16 one opened and another sealed), the blood stained knife used for peeling coconut (M.O.9), knife blade (M.O.11), red colour knife handle (M.O.12) lying near the dead body and the knife with black handle stuck in the neck of the deceased were recovered. Besides, blood stained soil, soil without blood, blood stained nylon rope (M.O.13), ever silver tumbler (M.O.14), two plastic chairs (M.O.15) and a key chain with key (M.O.17) were recovered under mahazar Ex.P.4.

3.9. P.W.12, who is the witness and signatory to the observation mahazar (Ex.P.3) and for the recovery mahazar (Ex.P.4) had deposed about the scene of crime and material objects recovered from the scene of crime.

3.10. Along with the materials collected from the scene of occurrence, the dress of the deceased with blood stains were sent for biological and serological test. P.W.30, the Scientific Officer, Forensic Science Lab, Madurai, had given the biological report Ex.P.17 and serological report Ex.P.18 to the effect that the blood stains collected from the blouses, shawl, towel (M.O.5 to M.O.8) detected human blood of 'O' group. The blood stains collected from the chudidhar pant and tops of the deceased (M.O.1 and M.O.2) also detected human blood of 'O' group.

3.11. On 26.11.2015 at 17.30 hours, the Investigation Officer [P.W.36], on suspicion, seeing the newly stitched clothes near the dead body of Pavithra and examining the call details of the deceased went to the house of the appellant Shymala at Door No.26, 3rd Street, Ahimsapuram, Sellur, Madurai. There he found the appellant and the co-accused Ramesh. On interrogation, they confessed the guilt. The golden stud [M.O.21] and the dress, which she was wearing at the time of committing the crime, were recovered based on her information. The co-accused Ramesh also gave a statement confessing his guilt. P.W.14 Gopalakrishnan and P.W.15 Sivaganesh are the witnesses for the confession statement, dated 26.11.2015 leading to recovery of M.O.21 gold stud, weighing 6 grams, the yellow colour blouse (M.O.4) and yellow colour floral (M.O.3) (not marked) under the mahazar [Ex.P.33].



3.12. Based on the fact disclosed by the co-accused Ramesh in his confession statement, Room No.102, Thirupathi Lodge was searched and a Krishnan dollar gold chain [M.O.22], broken silver lock [M.O.23], blood stained jeans pant of the co-accused Ramesh [M.O.24] and SBI jewel loan voucher in the name of Sumothu were recovered.

3.13. The blouse (M.O.4) and saree recovered from the possession of the appellant Shymala and the jeans pant (M.O.24) recovered from the co-accused Ramesh were sent to forensic laboratory for biological and serological test. P.W.30, the Scientific Officer, Forensic Science Lab, Madurai, had given the biological report (Ex.P.19) and serological report (Ex.P.20) to the effect that the no blood stains detected from the blouse and saree. The blood stain collected from jeans pant detected human blood of 'O' group.

3.14. P.W.1 to P.W.4 had deposed that the appellant Shymala is a known person to their family as a Tailor. She used to visit the house of the deceased for collecting and to deliver clothes. In many times, she used to come with the co-accused. The jewels recovered from the appellant and her co-accused Ramesh identified by P.W.1.

3.15. P.W.5 the courier boy had deposed that on 20.11.2015 when he tried to deliver the post addressed to Jeyanthi [P.W.2], he heard a voice from the house that she is taking bath and the post may be left with the person at ground floor. Soon thereafter, a lady peeped from the door. P.W.5 could recognize the face due to the curt behavior of the lady.

3.16. P.W.6 had deposed about the visit of the courier boy on that day and the receipt of the cover. The tapal cover Ex.P.29 and the acknowledgment slip Ex.P.31 related to the delivery of the post and the signature of P.W.6 proves the fact on 20.11.2015 a post addressed to P.W.2 Jeyanthi was delivered to P.W.6 on the instruction of the lady, who was in the first floor at that time.

3.17. P.W.7, the husband of P.W.6, corroborates the evidence of P.W.6. He called the police through 100. His evidence narrates how the crime came to light and it is in line with other witnesses P.W.1 to P.W.3.

3.18. P.W.8, P.W.9, P.W.11, P.W.12 and P.W.34 are other family members of the deceased, who came to the house of the deceased soon after hearing the news about the murder of Pavithra. P.W.12 is the witness for the observation mahazar and recovery mahazar at the scene of crime.

3.19. P.W.13 is the Officer at Professional Courier, who delivered the post Ex.P.29 on 20.11.2015. P.W.14



and P.W.15 are the independent witnesses for the confession statement of appellant and for the recovery of M.O.21 from the possession of the appellant.

3.20. P.W.16 is the owner of the P.C.O. On 20.11.2015 the appellant had called the deceased through this P.C.O. to ensure that the deceased is alone at her residence. The prosecution has filed the C.D.R. and C.A.F. details collected from Airtel along with certificate under Section 65-B of the Evidence Act (Ex.P.12 and Ex.P.13). P.W.23 the Nodal Officer of Bharthi Airtel had deposed about the C.D.R. and the subscribers detail, which go to show that on 20.11.2015 at 10.00 am, the appellant called the deceased from the P.C.O. of P.W.16.

3.21. P.W.18 under whom the appellant was working had deposed that on 20.11.2015 the appellant came to work late at 01.00 pm and on 26.11.2015 sought permission to leave early to visit temple and at 03.00 pm she left.

3.22. P.W.20 is the provision shop keeper in the Street where the appellant was residing. He had deposed that on 20.11.2015, the appellant came to his shop at 10.30 a.m. and bought two packets of Sakthi Chilli Powder for Rs.20/-. Since there were some other customers, she urged him to attend her immediately. She gave Rs.50/- and got back Rs.30/-.

3.23. P.W.17 the Lodge Keeper of Thirupathi Lodge, where the co-accused Ramesh stayed in Room No.102, P.W.20, the Manager of Muthoot Finance, where the Krishnan dollar chain was pledged by the co-accused through his friend Pandi. P.W.21 and P.W.22 are the witnesses to the second confession statement of the co-accused and the recovery of stolen jewels from the State Bank of India, Chinnamanur. P.W.31 is the Manager of the State Bank of India, Chinnamanur Branch. These witnesses have deposed incriminating the co-accused Ramesh.

3.24. P.W.24 to P.W.27 and P.W.33 are the police official witnesses. P.W.36 is the Inspector of Police, who investigated the case and filed the final report.

3.25. P.W.28 and P.W.32 are the Doctors, who received the body of the deceased and conducted autopsy respectively. P.W.29 and P.W.30 are the Assistant Director and Scientific Officer of the Regional Forensic Science Laboratory, Madurai.

4. The trial Court had considered the fundamental circumstantial evidence, like both the accused seen together moving closely prior to the occurrence. Both found together on 20.11.2015 within the vicinity of the site of crime, hurriedly crossing the road. Found together on 26.11.2015 at the residence of the

appellant for interrogation. The newly stitched clothes (M.O.5 to M.O.8) with blood stains found near the scene of occurrence and the blood group matching the blood group of the deceased. Recovery of a stud [M.O.21], which belongs to the deceased, from the possession of the appellant based on her confession statement. Recovery of A-2's room key with key chain (M.O.17) near the scene of occurrence and recovery of M.O.22 (gold chain with Krishnan dollar), M.O.25 (gold twisted chain) and M.O.26 (gold stud) of the deceased from the custody of the co-accused based on his confession statements. The recovery of blood stained jeans pant of A-2, which on serology test, deducted human blood of 'O' Group, the blood group of the deceased.

5. The trial Court, therefore, held that, all the circumstances point towards the guilt of the accused and incriminating circumstance are found to be incompatible with the innocence of the accused or the guilt of any other persons. Since there is no other hypothesis is available, the prosecution has proved beyond doubt that the appellant Shyamala along with the co-accused Ramesh trespassed into the house of the deceased when she was alone, voluntarily caused her death with intention to rob jewels from the deceased. They robbed M.O.21 stud (6 grams), M.O.22 Gold chain with Krishnan dollar, M.O.25 twisted Gold chain (Murukku chain) and M.O.26 Gold stud with stone. Hence, guilty of offences punishable under Sections 449, 302 read with Section 34 and 392 of I.P.C. However, they are not guilty of the offence of conspiracy punishable under Section 120-B of I.P.C., since the prosecution failed to prove the charge.

6. The learned counsel for the appellant assail the trial court judgment of conviction and sentence on the ground that, the key witnesses for the prosecution are all closely related and interested witnesses. P.W.1 is the father of the deceased and he is the de-facto complainant in this case. P.W.2 is the mother-in-law of the deceased. P.W.3 is the mother of the deceased. P.W.4 is the sister-in-law of the deceased. P.W.34 is the husband of the deceased. P.W.8, P.W.9, P.W.11 and P.W.12 are close relatives of P.W.2. The deceased married the son of P.W.2 only few months prior to the incident and her husband P.W.34 was living in Dubai at the time of the incident. P.W.2 alone was residing with the deceased at the first floor of Door No.16/35, Old Agraharam Street, Chinna Chokkikulam, Madurai. P.W.2, who is the person, lastly seen the deceased alive. Her evidence that she used to call her daughter-in-law daily from her Office and on 20.11.2015 she called her daughter-in-law and she did not respond, is highly doubtful, since the Investigation Officer has not collected her call details whether she called her daughter-in-law on 20.11.2015.

7. As per the prosecution, P.W.5 saw the appellant in the residence of the deceased on the day of occurrence when he went there to deliver a post. Admittedly, the appellant is a stranger to the deceased. P.W.5 claims to have seen her when she peeped through



half opened door. The Investigation Officer had not taken any steps to conduct Test Identification Parade. Even according to this witness, he did not see the co-accused Ramesh at that time along with the appellant Shymala.

8. The complaint [Ex.P.1] itself a doubtful document since it was received by the Police only at 19.00 hours on that day, though the testimony of the witnesses including the Investigation Officer admits that the Police reached the scene of crime much prior to the receipt of the complaint [Ex.P.1]. Particularly, P.W.6 and P.W.7 had deposed that immediately after seeing the dead body of Pavithra, P.W.6 informed her husband P.W.7, who came home to have his lunch and he called 100 and informed the Police. Therefore, embellishment, overstatement of facts and falsehood to screen the real offender cannot be ruled out.

9. Further, in the complaint except missing of the dollar chain, no other jewels mentioned. Particularly, the stud [M.O.21] alleged to have recovered from the appellant from her house does not find place in the complaint [Ex.P.1].

10. The alleged confession of the appellant and the co-accused leading to discovery of fact in the presence of same witnesses P.W.14 and P.W.15 bristles with serious suspicion and deserves to be disbelieved totally. According to the deposition of these witnesses, it is clear that they were forced to come to the Police Station under the pretext of verifying the vehicle document under threat and their signatures were obtained in the documents at the Police Station.

11. Further, as per the testimony of P.W.17 Shanmugampillai, the caretaker of the Thirupathi Lodge, the co-accused Ramesh was arrested by the Police on 20.11.2015, whereas, as per the prosecution case, both the accused were arrested on 26.11.2015 at the residence of A-1, the appellant herein.

12. The several vital contradictions, which shakes the fundamental foundation of the prosecution case regarding the recovery based on confession not taken note by the trial Court. The fundamental contradictions breaks the link in the chain of circumstantial evidence and indicate many other probable hypothesis.

13. In the test identification parade, P.W.16 has not identified the appellant. The identification of the appellant by other witnesses at the Police Station is not in consonance with the procedure established under law.

14. The trial Court while rightly held that the prosecution has not proved the conspiracy between the appellant and the co-accused, ought to have also held that the prosecution has failed to prove the



15. The case of the prosecution is that the murder was committed for gain and jewels robbed were recovered based on the confession of the accused, whereas, none of the witnesses for the prosecution has identified the jewels as it belongs to the deceased.

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16. The medical evidence namely postmortem report [Ex.P.22] does not concur with the prosecution theory that the accused tried to strangulate the deceased with the nylon rope (M.O.13) .

17. To buttress his submissions, the learned counsel for the appellant relied upon the following judgments:-

(1) **Gargi vs. State of Haryana [2019 (9) SCC 738] :**

For the general principles governing circumstantial evidence.

(2) **Digamber Vaishnav and another vs. State of Chhattisgarh [2019 (4) SCC 522]:**

For the principle last seen together cannot by itself form the basis of holding the accused guilty of offence. To constitute the last seen together factor as an incriminating circumstance, there must be close proximity between the time of seeing and recovery of dead body.

(3) **Nagendra Sah vs. The State of Bihar [LL 2021 SC 457 (Criminal Appeal No.1903 of 2019, dated 14.09.2021)] :**

In a case governed by circumstantial evidence, if the chain of circumstance, which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all.

(4) **Jebaraj and another vs. State, Rep. by the Inspector of Police, Arumuganeri Police Station, Arumuganeri, Thoothukudi District [2019 (4) MLJ (Crl.) 129]:**

The Court cannot convict an accused on mere surmises, conjecture and suspicion. The prosecution is expected to prove the guilt of the accused beyond all reasonable doubts.

(5) **Ravi @ Ravichandran vs. State, Rep. by Inspector of Police [2007 (3) Supreme 781] :**

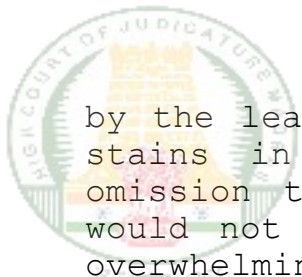
In case the accused is an unknown person to the witness, it is incumbent upon the prosecution to arrange a test identification parade. Such test identification parade required to be held as early as possible so as to exclude the possibility of the accused being identified either at the Police Station or at some other place by the concerned witnesses or with reference to the photographs published in the newspaper. A conviction should not be based on a vague identification.



18. Per contra, the learned Additional Public Prosecutor submitted that it is a case of circumstantial evidence, pointing out the inference of guilt cogently and firmly towards the appellant and the co-accused Ramesh. The circumstances taken cumulatively form a complete chain leading to a firm conclusion by all probabilities that the appellant and the co-accused Ramesh alone and none else had committed the offence. The accused in this case are known to the family members of the deceased. Therefore, the plea of lapse in identifying the accused in the Police Station or by showing the Photograph, does not carry any weightage.

19. Similarly, non-conducting identification parade with P.W.5 is not fatal to the case of prosecution, since the said witness had categorically deposed in his chief-examination that he was able to register the face of the appellant herein since she closed the door curtly. Identification parade is conducted to enable the Investigation Officer to ascertain the identity of the person, which is not known or familiar. In this case, the evidence of P.W.1 to P.W.4, P.W.8, P.W.9, P.W.11, P.W.12 and P.W.34, who are the family members of the deceased, is well acquaintance with the appellant herein, who being the tailor of the deceased since her school days. These witnesses have seen the appellant along with the co-accused Ramesh and have spoken about the close proximity. Therefore, there is no necessity to conduct identification parade, as far as the appellant is concerned, in respect of these witnesses. One another witness is P.W.16 - Viswanathan, P.C.O. owner. No doubt, identification parade was conducted in jail by the learned Judicial Magistrate, in which, the said Viswanathan was not able to correctly identify the appellant. Notwithstanding the fact that P.W.16 did not identify the appellant during the identification parade, during the testimony before the Court, he has identified the appellant, which is the substantial piece of evidence.

20. The prosecution has proved the recovery of M.O.21 from the possession of the appellant based on her confession statement. No plausible explanation had placed before the Court by the appellant herein for the said possession. The cumulative assessment of the fact as established by the prosecution through the witnesses regarding the motive, association of the appellant with the co-accused Ramesh, their presence near the vicinity of the scene of occurrence, recovery of newly stitched blouses from the scene of occurrence, Chilli Powder present at the scene of crime and the purchase of Chilli Powder by the appellant from the shop of P.W.19 and the identification of the appellant by P.W.19, who is running a provision shop in the Street, where the appellant is residing, the presence of the appellant along with the co-accused Ramesh on 26.11.2015 when the Police went to her residence for interrogation, recovery of other incriminating materials from other co-accused confirm the complete chain of circumstances incriminating the appellant herein. Therefore, despite the fact that P.W.16 did not identify the appellant in the test identification parade conducted



by the learned Judicial Magistrate in Prison, absence of any blood stains in the blouse and saree recovered from the appellant, omission to file a sniffer dog's report and finger print report would not taint the case of the prosecution, in the view of the overwhelming evidence against the appellant.

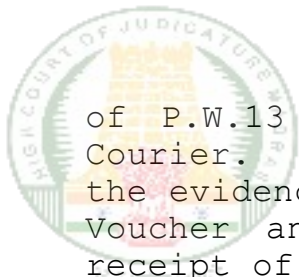
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21. The point for consideration before this Court is whether the circumstantial evidence placed by the prosecution accepted by the trial Court as proved is sufficient to hold the appellant guilty and convict her to undergo life imprisonment for the murder of Pavithra.

22. The prosecution has examined 36 witnesses, out of which, nine of them are relatives of the deceased; six of them are Police witnesses, who are part of the investigation team; two of them are Scientific Experts, who conducted Biological and Serology Test; and rest of them are all independent witnesses.

23. According to the prosecution, at the time of occurrence, it was P.W.5, who had seen the appellant in the house of the deceased. Therefore, his evidence is more crucial and to be scrutinized scrupulously.

24. P.W.5 - Abdul Kapoor is a delivery boy working in Professional Courier. According to his testimony, on 20.11.2015 at 11.00 a.m., he collected letters and went to Old Agraharam Street, Door No.16/35, to deliver a post addressed to P.W.2 - Jeyanthi. He went to the first floor and knocked the door twice and informed that he has come to deliver a post addressed to Jeyanthi. There was no response for sometime. Later on, he heard a lady voice saying that she is taking bath. Again, he informed that he has to deliver a post to Jeyanthi. In response to this, the said lady has requested him to deliver the post at the ground floor. When he started climbing down the stairs, he heard a noise of opening the door and he turned back, a lady peeped her head. He asked her whether she will collect the post. The said lady harshly told him to deliver it at the ground floor and slapped the door forcibly. This conduct, according to the witness, has made him to recollect the same and identify her in the Court. A reading of deposition of P.W.5 is natural and his reasoning to remember the face of the appellant is quite natural and acceptable. The trial Court has rightly accepted this witness as a trustworthy witness. No doubt, the appellant was shown to him in the Police Station and he has identified her, which does not concur with the procedures recognized by the Court for test identification. Nonetheless, this witness was taken to the learned Judicial Magistrate for recording 164 Cr.P.C. statement on 08.02.2016 and the statement was recorded by the Magistrate, which in fact, corroborates the testimony before the Court. The cross-examination of P.W.5 by the accused has not impeached his credibility. The evidence of P.W.5 is corroborated by the evidence



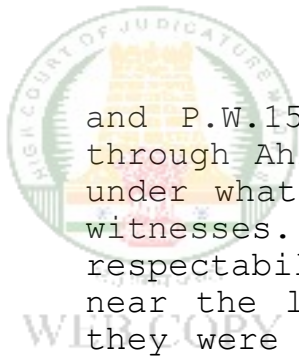
of P.W.13 - Asraf, who is Office In-charge of the Professional Courier. The prosecution besides oral testimony, to substantiate the evidence of P.W.5, had marked the Courier Tapal Cover [Ex.P.29], Voucher and documents related to Courier Tapal [Ex.P.31]. The receipt of the Tapal by Selvi is proved through the documents, which corroborates the evidence of P.W.6 - Selvi about the presence of P.W.5 on 20.11.2015 at 11.00 a.m. and the delivery of the postal cover to her.

25. Coming to the recovery of M.O.21 from the possession of the appellant/accused, the said recovery is effected from the residence of the appellant on 26.11.2015. The recovery was pursuant to the confession statement given by the appellant. The admissible portion of her confession is marked as Ex.P.32.

26. One of the incriminating circumstances against the appellant is the presence of co-accused Ramesh with her on 26.11.2015 at her residence. According to the prosecution, M.O.21 Gold stud weighing 6 grams, M.O.22 Gold chain with Krishnan Dollar weighing about 19 grams, M.O.25 Gold twisted chain weighing about 7 sovereigns, M.O.26 Gold stud with stone weighing about 11 grams and M.O.27 gold stud embedded with pearls weighing about 4 grams are the valuable gold ornaments robbed from the deceased's house. While M.O.21 gold stud weighing 6 grams recovered from the appellant herein from her residence based on her confession statement, the other valuables namely, M.O.25, M.O.26 and M.O.27 were recovered from the possession of the co-accused Ramesh.

27. It is contended by the learned counsel for the appellant that the valuables were not identified by any of the witnesses for the prosecution. This contention is found to be false in view of the fact recorded by the trial Court that these valuables were given interim custody to P.W.1 by the order of the learned Judicial Magistrate, dated 30.12.2015 in Cr.M.P.No.7292 of 2015 and the same was produced by P.W.1 during the course of trial for marking and returned back to P.W.1's custody. Besides that, the prosecution witnesses P.W.1, P.W.2 and P.W.3 also spoken about these valuables stolen from the house of the deceased. The confession statement and recovery from the appellant herein is corroborated not only by the material objects recovered from her, but also by the oral evidence by P.W.14 - Gopalakrishnan and P.W.15 - Sivaganesh. These two witnesses are independent witnesses and they have no axe to grind against the appellant.

28. It is contended by the learned counsel for the appellant that they were procured by the Police by force. P.W.14 and P.W.15 have deposed that on 26.11.2015 at 04.45 p.m., while crossing Ahimsapuram III Street, Sellur, Madurai, during the vehicle check up, the Police intercepted them and asked them to follow them to the Police Station and at the Police Station, they were asked to be



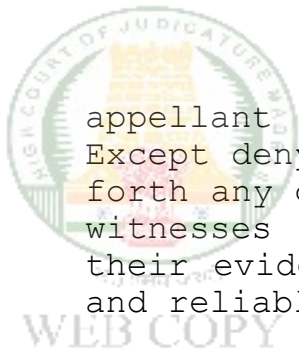
and P.W.15 narrates under what circumstance they were travelling through Ahimsapuram III Street, where the appellant is residing and under what circumstance, they were asked by the Police to stand as witnesses. From their evidence, there is no doubt about their respectability in the locality and the location of their residence near the locality. There is no indication in their evidence that they were forced to give evidence. It was on the request of the Police, they voluntarily offered to be the witnesses. The credibility of these witnesses not been impeached in the cross-examination. Their evidence is consistent, corroborative and incriminatory against both the accused in respect of their confession leading to recovery of material objects, which were proved to be the property of the deceased.

29. The another incriminating circumstance against the appellant is the recovery of newly stitched blouses with blood stains near the dead body of Pavithra.

30. From the call details furnished by Airtel and marked as Ex.P.12, Cell No.9566478569 stands in the name of Balamurugan, S/o.Pandi. From this phone number, at 10.32 : 56 a call has emanated to 8695230530. According to the Investigation Officer, the Cell number stands in the name of Balamurugan, S/o.Pandi and was in use by Ramesh, the co-accused and the Cell No.8695230530 is the number of the deceased Pavithra. There is no evidence how Cell No.9566478569 stands in the name of Balamurugan, S/o.Pandi, been used by Ramesh, the co-accused. This Court also finds no evidence to show that Cell No.8695230530 is the number used by the deceased. Therefore, not much significance or reliance can be made on this aspect. The lapse of the prosecution to link the Cell number to that of the accused persons does not discredit the evidence of other witnesses, like P.W.5, the courier boy and P.W.19 - Mayakrishnan, the provision shop owner.

31. P.W.8 - Vigneshkumar, who saw the appellant and the co-accused Ramesh hurriedly crossing the road near Old Aghraharam Street, about 11.40 a.m., on the date of occurrence. To substantiate the case of the prosecution, the presence of the appellant along with the co-accused Ramesh on 26.11.2015 at her residence was proved. The recovery of M.O.21 and other material objects based on their confessions is proved through Material Objects and independent witnesses by the prosecution. The co-accused Ramesh and other independent witnesses, who had spoken about pledging of Krishnan dollar gold chain at Muthoot Finance and pledging of twisted chain and two studs at State Bank of India, Chinamanur Branch, are impeccable evidence indicating the guilt of the appellant and the co-accused Ramesh without any iota of doubt.

32. Incriminating circumstances against the appellant has been proved beyond reasonable doubt and the chain of circumstances is perfect leading to the only inference that the

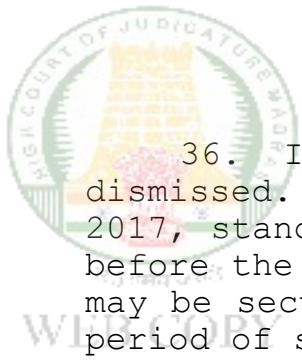


appellant and the co-accused Ramesh alone are guilty of the crime. Except denying the incriminating evidence, the appellant has not put forth any other possible defence version. Just because, most of the witnesses are related to the deceased, the Court cannot discard their evidence, if their presence and testimony inspires confidence and reliable.

33. The prosecution has not placed before the Court any finger print expert opinion or material to show that they lifted substantial finger print from the scene of occurrence, however, it is not fatal to the instant case, because the tell-tale evidence viz., newly stitched blouses lying around the dead body and the room key chain of the co-accused found near the wooden bureau in the house of the deceased, the blood stains in the pant of the co-accused, purchase of Chilli Powder from the shop of P.W.19 by the appellant, render substantial corroboration to the fact what P.W.5 Abdul Kapoor has deposed regarding the presence of the appellant herein at the house of the deceased during the probable time of Pavithra's death. In addition, P.W.8's evidence that he saw the appellant herein along with the co-accused Ramesh at 11.40 a.m. while they were hurriedly and panically crossing the road near Old Aghragaram Street, where the deceased was residing and found death in a suspicious circumstance at that time.

34. In **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)** reported in **2010 (6) SCC 1**, the Hon'ble Apex Court has held that cryptic telephone message does not amount to first information. Therefore, when the Police received a cryptic telephone message, reached the scene of crime even before receipt of formal complaint, will not throw away the case of prosecution. The Court has to consider the circumstance under which the Police has reached the scene of occurrence. In this case, while P.W.1 along his friend P.W.10 had gone to the Police Station to give complaint, the Police on receipt of telephonic information, had reached the scene of crime. A reading of Ex.P.1 clearly indicates and reveals the fact without any embellishment or tutoring. Therefore, there is no reason to disbelieve the same or to suspect that there was some other information reached earlier and the same been suppressed. It is to be noted that the time difference between the alleged presence of the Police at the scene of occurrence before the complaint is hardly few hours and nothing to substantiate about any suspicion of embellishment in the content of P.W.1.

35. On cumulative assessment of the evidence placed by the prosecution, this Court concludes that the prosecution has proved the guilt of the appellant/accused beyond any reasonable doubt and the finding of the trial Court regarding guilt of the appellant is well fortified by the evidence, which has not been impeached or discredited. All fundamental facts are proved beyond reasonable doubt, indicating the guilt of the appellant that the crime of murder of Pavithra for gain.



36. In the result, Criminal Appeal (MD)No.12 of 2019 is dismissed. The judgment of the trial Court passed in S.C.No.166 of 2017, stands confirmed. The appellant is directed to be surrendered before the trial Court within 15 days from today, failing which, she may be secured and committed to prison for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (Crl side)

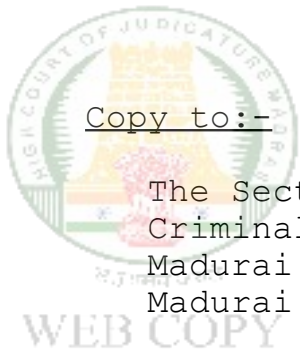
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/ /2022

Sub Assistant Registrar(CS)

To

- 1.The Principal District and Sessions Judge,
Mahalir Neethi Mandram,
Madurai.
- 2.The Judicial Magistrate No.2,
Madurai.
- 3.The Chief Judicial Magistrate,
Madurai.
- 4.The Inspector of Police,
Thallakulam Crime Branch Police Station,
Madurai City.
- 5.The Superintendent,
Central Prison(Women Cell),
Madurai.
- 6.The Director General of Police,
Mylapore,
Chennai.
- 7.The District Collector,
Madurai.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to:-

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

+1 CC to M/s.R.JENIFER BIBIN, Advocate (SR-1542[F] dated
12/01/2022)

Cr1.A. (MD)No.12 of 2019
12.01.2022

RK(12/01/2021) 18P 12C