



Crl.A.(MD).No.253 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	22.08.2023
Pronounced on	13.12.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

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1.Jahaber Sathik
2.Arivazhakan

..Appellants /
Accused Nos.1 & 2

Vs.

State Represented by
The Inspector of Police,
Thiruvaidaimarudhur Police Station,
Thanjavur District.

..Respondent /
Respondent

Appeal filed under Section 374(2) of Criminal Procedure Code, praying to call for the records in Sessions Case No.13 / 2019, dated 25.03.2021 on the file of the Additional District & Sessions Judge, (Fast Track Court), Kumbakonam, Thanjavur District, and set aside the judgment and allow this Criminal Appeal.



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For Appellants : Mr.C.Mayil Vahana Rajendran
for Mr.K.Veilmuthu

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by ***M.S.RAMESH, J.***)

The appellants herein have been arrayed as the 1st accused (A1) and 2nd accused (A2) before the trial court. The case of the prosecution is that at about 22.45 hours of 15.04.2018, both the accused had come to the house of the deceased Ajitha Beevi at Aaduthurai South Seniya Street. While A2 rang the calling bell at the door, A1 had entered the house through the back door and strangulated her with her saree. After murdering her, they had stolen 9¾ sovereigns of gold jewelry from the body of the deceased and left the scene, in the bike of A2 and hence, both of them were charged of having committed the offences under Sections 457, 380 and 302 IPC r/w 34 IPC.

2. The trial court had placed reliance on the evidence of P.W.12 and P.W.13, who had last seen both the accused together near the house of the deceased and also on the oral testimony of the finger print expert (P.W.15)



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confirming the finger print match of A1, with the finger print recovered at the scene of occurrence, as well as on the recovery of the stolen jewels from the house of both the accused and had come to the conclusion that the prosecution had proved all the charges against the accused, beyond reasonable doubt and accordingly, convicted both the accused to various imprisonments, including rigorous imprisonment for life for the charged offences. This judgment of the trial court passed in S.C.No.13 of 2019, dated 25.03.2021 on the file of the Additional District and Sessions Court, Kumbakonam is put under challenge in the present appeal.

3. Before the trial court, the younger sister's son of the deceased was examined as P.W.1. According to his testimony, on 13.04.2018, his mother was with the deceased and had left her house the next day morning. Thereafter at 7.30 p.m., his mother had spoken to the deceased over phone. On the same day at about 10.45 p.m., when his mother had called the deceased over phone, she had heard a male voice, which created a suspicion and therefore, his mother had called P.W.3 and P.W.4, who were residing near the deceased's house to check up on her sister. When P.W.3 and P.W.4 had gone to the house of the deceased, they found the front door locked



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from inside and the back door open. Inside the house, the deceased was dead with bleeding injuries. The cupboard was broken and the jewels on her body were missing. When P.W.1 heard this news, he along with his mother had come to the house of the deceased and had given a complaint-Ex.P.1 to the Police.

4. The evidence of P.W.3 and P.W.4 also corroborates with the evidence of P.W.1. The prosecution had produced P.W.12 and P.W.13 before the trial court, who had witnessed both the accused together near the scene of occurrence before the incident. In their evidences, both these witnesses had stated that they had seen both the accused together with a rope in their hands.

5. P.W.15 is a finger print expert, who had taken the finger prints from the cupboard in the deceased's house that was broke open and by comparing the prints with that of the sample finger print of A1 and A2, had deposed that the finger print on the cupboard, matches with that of A1. The requisition letter for comparison of the finger print was marked as Ex.P9 and his report was marked as Ex.P.11.



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6. P.W.16 is the Investigating Officer, who had conducted the inquest and the Investigating. In his oral evidence, he speaks about the information received by him about the death of Ajitha Beevi and the Investigating conducted by him, wherein he had requested the finger print experts to obtain prints from the scene of occurrence, the arrest of A1 and A2, the recovery of the stolen jewels from the cowshed of A1's house and a nylon rope, in the presence of P.W.5 and P.W.6, as well as the recovery of a gold chain from A2's house.

7. P.W.8 is the Doctor, who had conducted the postmortem and in his report Ex.P.5, the cause of the death was stated to be due to strangulation with the rope like article, leading to the death.

8. The learned counsel for the appellants submitted that P.W.6 in his oral evidence has stated that he had seen both the accused in the police station at 1.00 p.m., of 17.04.2018 and in view of the statement of the Investigating Officer (P.W.16) that he had arrested both the accused only at 1.00 p.m. of 17.04.2018, the recovery and the subsequent Investigating are



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doubtful. He further submitted that since the deceased was not seen with both the accused, the last seen theory put forth by the prosecution through P.W.12 and P.W.13 cannot be substantiated. He also stated that the statement of P.W.12 and P.W.13 had reached belatedly and therefore, no reliance could be placed on their oral testimony.

9. Per contra, the learned Additional Public Prosecutor submitted that no questions were put to the Investigating Officer by the defense with regard to the belated statement of P.W.12 and P.W.13 and therefore, such a ground cannot be taken in the appellate stage. This apart, he submitted that the finger print expert P.W.15 had given a report establishing and matching the finger print of A1 at the scene of occurrence and hence, the statement of P.W.12 and P.W.13 of having seen both the accused together immediately before the occurrence gains significance.

10. The case of the prosecution rests on circumstantial evidence. The circumstances relevant for determining the case in hand are the recovery of the stolen jewels from the house of A1, the finger print of A1 found in the scene of occurrence and the last seen theory put forth by the prosecution.



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Insofar as the findings of the trial court holding A1 guilty of the charged offences is concerned, P.W.15's evidence reveals that on the basis of the information from the Investigating Officer, he had visited the house of the deceased at 4.00 p.m. on 16.04.2018 and had extracted the finger prints from various places and articles in the house, including the broken cupboard, from which one finger print was taken. While comparing this finger prints, he had come to the conclusion that it did not match the finger print of the deceased. Likewise, the finger print also did not match the finger prints in the other criminal records. Thereafter, he had compared the chance finger print, with that of finger prints of A1 and A2 and the chance finger print had matched the finger print of A1. The requisition letter for examining the finger prints was marked as Ex.P9 and the report given by him was marked as Ex.P11.

11. In the cross examination, the statement of P.W.15 could not discredited by the defense. A1 was seen near the house of the deceased by P.W.12 and P.W.13 on 15.04.2018 at about 11.30 p.m. No explanation or contra evidence could be elucidated by the defense from any of the witnesses to disprove or render any other explanation in connection with the



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presence of A1's finger print in the steel cupboard of the deceased house or to disprove his presence near the scene of occurrence at the relevant time.

The chain of evidence of A1 having been seen near the house of the deceased on 15.04.2018 at about 11.30 p.m. and the occurrence which is said to have taken place at 11.45 p.m, on the same day, as well the finger print of A1 in the steel cupboard near the dead body, is so complete as to not leave any reasonable doubt for the conclusion that A1 must be guilty of causing the death. Thus, the circumstance from which the conclusion of the guilt of A1, has been fully established by the prosecution.

12. This apart, the stolen jewels viz., four bangles, weighing 48.50 grams, a gold dollar, weighing 4.50 grams, ear stud and 2 rings, weighing 4 grams and 3 grams each, have been recovered from the cowshed in the house of A1 and the jewels have also been identified by P.W.1., confirming them of having belonged to his mother's elder sister, who is the deceased. The Investigating Officer (P.W.16) also had stated that a majority of the jewels of the deceased were recovered from A1's house. Likewise, a chain weighing 16 grams is also claimed to have been recovered from the house of A2. Thus, recovery of the stolen jewels in the presence of P.W.5 and P.W.6



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and the identification of these jewels by P.W.1, confirming that it belonged to the deceased, also establishes the presence of A1 in the scene of occurrence. These circumstances also add to the chain of evidence and completes the circumstances to hold A1 guilty of the charged offences. Thus, the findings of the trial court, holding A1 guilty of the levelled charges, cannot be found fault with.

13. Insofar as the conviction of A2 is concerned, the same is only on the basis of recovery of a gold chain from his house and the last seen theory put forth by the prosecution is based on the evidence of P.W.12 and P.W.13. In the cross examination, both P.W.12 and P.W.13 had affirmed that both the accused were running a mutton stall in the same street. P.W.13 had stated that in view of their mutton stall therein, both the accused were frequently seen near the place of occurrence. Apart from the evidence of P.W.12 and P.W.13, no other independent witness had seen A2 along with the deceased at any point of time. P.W.15 had matched the finger print found in the scene of occurrence to that of A1 alone and not A2.

14. Above all, it is the case of the prosecution that A1 alone had



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strangled the deceased and not A2. The only overt act attributed to A2 by the prosecution is that he rang the door bell at the time of the incident and that he had taken A1 in his motorcycle after commission of the offence. None of the witnesses speak about the presence of A2 for the overt acts attributed to him. On the other hand, P.W.13, who claimed to have seen A1 and A2 near the house of the deceased, had stated that he heard someone knocking the tin sheet door of the deceased's house on 15.04.2018 at 11.15 p.m., which is contrary to the prosecution's case of A2 ringing the calling bell. Thus, when the alleged presence of A2 near the scene of occurrence, immediately after the time of the accident, cannot be said to be a clinching piece of statement to complete the chain of circumstances leading to the death of the deceased, holding A2 also to have taken part in the criminal act with a common intention, is highly doubtful and is not supported by sufficient evidence.

15. The second appellant/A2 is said to have been seen along with A1 on 15.04.2016 at about 7.30 p.m. near the house of the deceased and both of them were having a nylon rope with them. The said rope had been recovered and seized from A1 which is marked as M.O.9. This fact has been spoken



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by P.W.12 and P.W.13. It is seen that both P.W.12 and P.W.13 were known to the deceased. While P.W.12 belongs to the same Jamadh of the deceased, P.W.13 is the maternal uncle of the deceased. P.W.12 admits that on the next day the Police identified both the appellants to him. The statements of P.W. 12 and P.W.13 reached the Court along with the charge sheet and when both the witnesses are important linking witness, strangely their statements had reached the Court belatedly. In view of the above fact, the evidence of P.W. 12 and P.W.13 has to be acted with caution.

16. The other circumstances are the arrest and confession of the second appellant. Ex.P19 is the confession statement of A2, which is marked through P.W.16/Investigating Officer. The witnesses to the confession P.W.6 (Village Administrative Officer) & P.W.7 (Village Assistant) were not shown and confronted with Ex.P19. It is seen that A2 disclosed the fact of an occurrence, dated 19.12.2017 at Pillayapettai VOC Nagar, wherein the first appellant/A1 had snatched a chain from a lady, while the second appellant/A2 was riding the two wheeler. Likewise, on 12.03.2018, both the appellants went to Najib Complex, broke open the



shutter of a shop and robbed tyres. These facts were not connected to the present case. It is projected as if both the appellants/A1 and A2 were jointly committing the above offences by using their mobile phones. The first appellant/A1 was using the mobile numbers 9585111367, 9500467410 and 7558141029. The second appellant/A2 was using the mobile number 9677433886. Pursuant to the disclosure of this fact, the Investigating Officer had written to the Service Providers, namely, Airtel and Vodafone, but thereafter was not further probed. The case projected is that both the appellants conspired using their mobile phones, before the occurrence, during the occurrence and after the occurrence but strangely the Investigating Officer failed to collect any call details in this regard.

17. Added to it, the chain snatched by the appellants on 19.12.2017 was found in possession of the second appellant and the same was shown as a recovery in Crime No.317 of 2017 for the offence under Section 392 Cr.P.C. But neither the chain nor Form 95 or any other records pertaining to Crime No.317 of 2017 were produced. The admitted case of the prosecution is that the second appellant had not entered the house of the deceased or committed any robbery. No property of the deceased or any other



incriminating materials were recovered from the second appellant. The chain of circumstances to connect the second appellant/A2 has thus snapped and hence is not complete.

18. Insofar as the recovery of 16 grams of gold chain from the house of A2 is concerned, the chain of circumstances leading to such a recovery, as projected by the prosecution, are as follows:-

(i) As per the oral testimony of the Investigating Officer/P.W.16, on 17.04.2018 at about 1 p.m., he had arrested A2 and in the presence of Saminathan, Village Administrative Officer (P.W.6) and Gopalakrishnan, Assistant Village Administrative Office (P.W.7), A1 had given his confession statement (Ex.P.19).

(ii) As per the admissible portion of the confession statement given by A2 (Ex.P.19), he had stated that if he is taken to his house, he would produce the stolen jewels, where he had concealed. Accordingly, P.W.16 had gone to the house of A2, wherein he claims to have recovered a gold chain weighing 16 grams, which is the case property in some other Crime No.317 of 2017.



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19. While Ex.P.23 is the seizure mahazar relating to the jewels seized from A1 (M.O.1 to M.O.4) and Ex.P.24 is the seizure of two cellphones (M.O.5 and M.O.7), Ex.P.25 is the seizure of one cellphone and the TVS sports two wheeler belonging to A2 (M.O.6 and M.O.8). Thus, no material object or any other incriminating articles were seized or recovered from A2 and hence, there was absolutely no material to connect A2 with the stolen jewels of the deceased.

20. This apart, P.W.16 claims to have seized the gold jeweleries from the house of A2 in the presence of P.W.6 and P.W.7. During the trial, P.W.7 was treated as a hostile witness. P.W.6, in his entire oral testimony, has not spoken a single line about the confession statement of A2, with regard to the jewels concealed in his house or the recovery made therefrom. In other words, P.W.6 has not implicated A2 with any imputation to link him with the stolen jewels.

21. In the case of *Sanwat Khan and another vs. State of Rajasthan* reported in **(1952) 2 SCC 641**, the Hon'ble Supreme Court had held that it is not safe to draw the inference that a person in possession of the stolen



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property was the murderer. In the case of ***Baiju alias Bharosa vs. State of Madhya Pradesh*** reported in (1978) 1 SCC 588, the Hon'ble Supreme Court had indicated certain factors that require to be taken into consideration for drawing a presumption based on the recovery of the stolen articles. Among the circumstances stated therein, the nature of evidence about the identification of the article, the place and the circumstance of its recovery, etc., are some of the relevant tests to be applied to implicate the accused person of the crime, in view of the recovery made from him.

22. In the present case, the only evidence let in by the prosecution to implicate A2 with the crime of murder, is the seizure of a gold chain from his house, which pertains to Crime No.317 of 2017. Apart from the statements of the Investigating Officer (P.W.16), there is absolutely no evidence to even remotely indicate that A2 was in possession of M.O.1 to M.O.4 or that the same was recovered from his house under a seizure mahazar and sent to the Magistrate under Form-91. Thus, in the absence of any material on record, which could even remotely implicate A2 for his involvement in the crime, we are of the view that A2/the 2nd appellant would be entitled to the benefit of doubt in his favour.



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24. In the result, the findings of the trial court holding that the prosecution has proved the charges against A1 for the offences under Sections 457 and 380 IPC and the consequential conviction and sentences stands confirmed. However, the conviction of A1 by the trial court for the offence under Section 302 IPC r/w Section 34 IPC is modified into a conviction under Section 302 IPC alone and A1 is hereby sentenced to undergo rigorous imprisonment for life and to pay a penalty of Rs.1000/-, in default to undergo simple imprisonment for 3 months. The judgment of the



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trial court convicting A2 for the offences under Sections 457, 380 and 302 IPC r/w 34 IPC are set aside and the second appellant/A2 is acquitted from all the levelled charges. The second appellant/A2 is directed to be released forthwith, unless his custody is required in connection with any other case.

25. The Criminal Appeal stands partly allowed.

(M.S.R.,J.) (M.N.K.,J.)
13.12.2023

NCC:Yes
Index:Yes
Speaking order
vsm/hvk



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- 1.The Inspector of Police,
Thiruvudaimarudhur Police Station,
Thanjavur District.
- 2.The Additional District & Sessions Judge,
(Fast Track Court),
Kumbakonam, 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.



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M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

vsm/hvk

Judgment in
Crl.A.(MD)No.253 of 2021

13.12.2023