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Crl.A(MD)No.103 of 2021 & Crl.A.(MD)No.449 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

and

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)No.103 of 2021

and

Crl.A.(MD)No.449 of 2023

Crl.A.(MD)No.103 of 2021:-

Prabakaran

... Appellant / Accused No.2

Vs.

State Rep. by,
The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.
(Crime No.487 of 2013)

... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records of the Court below and set aside the judgment and conviction dated 07.09.2020 made in S.C.No.2 of 2017 on the file of the learned Additional Sessions Judge (Fast Track Mahila Court), Karur and acquit the appellant / 2nd accused.



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For Appellant : Mr.S.Sivasubramanian
for Mr.E.Somasundaram
For Respondent : Mr.T.Senthil Kumar,
Addl. Public Prosecutor.

Crl.A.(MD)No.449 of 2023:-

Vetri @ Sivasubramanian ... Appellant / Accused No.1

Vs.

State Rep. by,
The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.
(Crime No.487 of 2013)

... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records of the Court below and set aside the conviction and sentence passed by the learned Additional Sessions Judge (Fast Track Mahila Court), Karur in S.C.No.2 of 2017 dated 07.09.2020 and acquit the appellant / accused No.1.

For Appellant : Mr.S.Sivasubramanian
for Mr.E.Somasundaram

For Respondent : Mr.T.Senthil Kumar,
Addl. Public Prosecutor.

COMMON JUDGMENT

These criminal appeals are directed against the judgment dated 07.09.2020 made in S.C.No.2 of 2017 on the file of the Additional Sessions Judge (Fast Track Mahila Court), Karur. By the impugned judgment, the



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appellants were found guilty of the offences under Sections 302, 392 and 201 of IPC. The details of the conviction and sentence are as follows :

Accused No	Section	Conviction and Sentence
Accused Nos.1 & 2	302 of IPC	To undergo life imprisonment and to pay a fine of Rs.1000/- each, in default to undergo 3 months simple imprisonment.
Accused Nos.1 & 2	392 of IPC	To undergo 10 years rigorous imprisonment and to pay a fine of Rs. 1000/- each, in default to undergo 3 months simple imprisonment.
Accused Nos.1 & 2	201 of IPC	To undergo 3 years rigorous imprisonment and to pay a fine of Rs. 1000/-, in default to undergo 3 months simple imprisonment.

The first accused is the appellant in Crl.A.(MD)No.449 of 2023 while the second accused is the appellant in Crl.A.(MD)No.103 of 2021.

2.The case of the prosecution is as follows:-

(i) The deceased Jayanthi was residing at Jeeva Nagar, Thanthondrimalai, Karur. She was constructing a new house opposite to the house of the first accused at Ashok Nagar. The deceased used to go to the house of the first accused. The deceased was a retired government servant.



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The husband of the deceased was residing at Kanyakumari. The son of the deceased was residing in a different part of Thanthondrimalai. The deceased was wearing gold chain, gold bangles and gold ear studs. The accused intended to murder her and rob the jewels. When on 19.10.2013 at around 02.30 pm, Jayanthi came to the house of the first accused, the first accused gagged her mouth with a piece of cloth while the second accused caught hold her hands. Jayanthi died due to suffocation. After removing the jewellery, the dead body was stuffed into a gunny bag and taken in a two wheeler by the accused. The gunny bag was dropped near the land of one Rajendran (P.W.3). It was then dozed with petrol and set fire. A pump operator (Selvaraj P.W.2) saw the body in half-burnt condition at about 06.00 A.M the following day and informed the jurisdictional Village Administrative Officer (P.W.1). The VAO lodged Ex.P1 / complaint dated 20.10.2013 before the Sub Inspector of Police, Pasupathipalayam Police Station. Based on Ex.P41, Crime No.487 of 2013 was registered at around 10.30 hours under Section 174 of Cr.P.C.

(ii) PW.10 Viswanathan, the husband of the deceased, developed suspicion when the mobile phone of his wife could not be reached. He came down to Karur on 23.10.2013. The house at Jeeva Nagar where his wife was residing was broken open with the aid of the building contractor (PW.5). On 29.10.2013, he went to the Inspector of Police, Pasupathipalayam Police



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Station and complained that his wife was missing. The police after investigation concluded that the unidentified body noticed by PW.2 on 20.10.2013 was that of Jayanthi, wife of PW.10. The investigation conducted by the Inspector of Police pointed to the involvement of the appellants. The first accused was arrested on 15.12.2013 at 08.00 am while the second accused was arrested on 16.12.2013 at 01.00 pm. Based on their confession, the jewels (gold chain, gold bangles and gold ear studs) worn by the deceased were also recovered. The husband of the deceased duly identified the said jewellery as those belonging to his wife. Final report was filed against both the accused before the Judicial Magistrate No.I, Karur.

3.It was taken on file in P.R.C.No.7 of 2016 and committed to the Sessions Court, Karur in S.C.No.2 of 2017. Charges were framed against the accused. They pleaded not guilty and claimed to be tried. On the side of the prosecution, PW.1 to PW.51 were examined and Ex.P1 to Ex.P65 and M.O.1 to M.O.28 were marked. The incriminating circumstances were put to the accused during examination under Section 313 of Cr.PC. The accused characterized the same as false. On the side of the accused, the Head Clerk of the court of Judicial Magistrate No.I, Karur was examined as DW.1.

4.After examining the evidence on record and hearing both sides, the trial Court vide judgment dated 07.09.2020 convicted and sentenced the



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accused as mentioned above. Aggrieved by the same, these appeals have been filed.

5.The learned counsel appearing for the appellants submitted that the prosecution case rests entirely on circumstantial evidence but the circumstances do not add up and that the chain of circumstances is not complete. They do not point to the guilt of the accused. According to him, the evidence on record is utterly insufficient to establish that the dead body noticed by P.W.2 on 20.10.2013 is that of Jayanthi, wife of P.W.10. The forensic tests conducted by the prosecution to establish the identity are faulty and unreliable. He also trained his guns on the conduct of the husband of Jayanthi. No husband whose wife is missing would wait for so long to approach the police. He also drew our attention to the fact that Anand, the son of the deceased was also residing in the very same town. The case of the prosecution rests primarily on recovery of jewels said to have been worn by the deceased. The prosecution version as regards recovery is dubious and cannot command the confidence of this Court. The learned counsel for the appellants submitted that the police did not even bother to confirm if the recovered jewels (M.O.16, M.O.17 and M.O.18) are actually made of gold. As many as 10 key prosecution witnesses turned hostile. He also pointed out that three versions regarding the manner in which the locked house was opened have been projected. He also vehemently contended that the cause of death



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has not been properly established. While the prosecution would come out with a theory that the deceased died due to suffocation, the autopsy report indicates that the deceased died as a result of burns. He characterized the approach of the trial Court as perverse. He relied on quite a few judgments in support of his contentions and called upon this Court to set aside the impugned judgment and allow these appeals and acquit the appellants.

6.Per contra, the learned Additional Public Prosecutor submitted that the impugned judgment is well reasoned and that the prosecution had successfully brought home all the key circumstances against the accused and proved the case against them beyond reasonable doubt. He called upon this Court to dismiss the criminal appeals.

7.We carefully considered the rival contentions and went through the evidence on record. What has to be seen first is whether the dead body in question was rightly identified as that of Jayanthi, wife of PW.10 Viswanathan. Ex.P36 DNA report marked through PW.42 confirms that DNA sample taken from the dead body in question belonged to a female. The body was found in a charred condition. After autopsy, the head was severed and sent for analysis to Forensic Sciences Department, Chennai. It was cleaned and the skull with mandible was obtained. PW.10 had earlier supplied the passport size photograph of Jayanthi (MO.15). The image of the skull was



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superimposed on the image of the facial photograph. Based on the superimposition test result, it was opined that the skull could possibly be that of the female individual found in MO.15. Ex.P34 containing this opinion was marked through PW.40. During cross examination, the said witness conceded that superimposition was not done with the aid of photograph taken laterally. In other words, only frontal superimposition was done. Thus, two dimensional technique alone was adopted. The Hon'ble Supreme Court in the decision reported in **(2022) 17 SCC 699 (S.Kaleeswaran v. State)**, referred to **Pattu Rajan v. State of T.N (2019) 4 SCC 771** and held that though identification of the deceased through superimposition is an acceptable piece of opinion evidence, however, the courts generally do not rely upon opinion evidence as the sole incriminating circumstance, given its fallibility and the superimposition technique cannot be regarded as infallible. In **Kaleeswaran**, it was further held that while conviction could be recorded even if the corpus is not found, but when as per the prosecution, the dead body of the victim was discovered, from the place shown by the accused, it is imperative on the part of the prosecution to prove that the dead body or the skeleton found at the instance of the accused was that of the victim and none else. In this case, the dead body was discovered by PW.2 and not at the instance of the accused. Nevertheless the prosecution was obliged to establish that the dead body is that of Jayanthi and none else. Jayanthi was a retired government servant aged about 62 years. PW.35, from the Forensic Department was called to



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assist the investigation officer on 20.10.2013. She went to the spot and expressed her opinion that the dead body might be that of a female aged above 50 years. A piece of cloth was found stuffed into the mouth of the body. Ex.P1 complaint lodged by PW.1 clearly mentioned that near the dead body, a burnt cellphone, coins and a bunch of keys were found. Photographs taken by PW.30 at the spot were marked as MO.20 series. The keys which were in three sets had also been photographed. That key bunches were found on the spot is also confirmed by PW.4 VAO of the adjoining village. The keys were identified by PW.10 as pertaining to Jeeva Nagar house in which his wife Jayanthi resided. According to him, one key pertained to outer door, the second one to inner door and the third one to the bureau. A duplicate set found inside the house matched with the keys retrieved from the occurrence spot. PW.10 has deposed that with the help of the keys retrieved from the spot, they were able to open. Ex.P65 Forensic Lab report marked through PW.50 also confirmed the matching of the two sets of keys. These are clinching circumstances. Our conclusion that the dead body in question was that of Jayanthi is not based on the superimposition test alone.

8.The learned counsel for the appellants pointed out that different versions with regard to opening of the Jeeva Nagar house have been projected. Since PW.5 deposed that they entered the house on 28.10.2013 after cutting the upper portion of the lock, the testimony of P.W.10 that the



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house was opened with the aid of the key recovered from the spot cannot be believed. In our view, this is a minor discrepancy. It is not as if only one key was recovered from the spot. MO.20 photograph indicates that the keys were in three sets. PW.10 has deposed that one key pertained to the outer door, the second key to the inner door and the third key to the bureau. The deposition of P.W.10 should be understood to refer to the keys other than the outer door key. P.W.10 had retired from service in the year 2010 itself and was senior citizen. Court should not make too much out of such minor lapses of memory. Therefore, we do not find any serious contradiction in the testimony of the prosecution witnesses.

9.We are conscious that there are no eyewitnesses to the occurrence. Since a piece of cloth was found stuffed into the mouth of the deceased and the body itself was burnt, one can safely conclude that the death was due to homicidal violence. It was not a natural death. There cannot be any alternative hypothesis. It is for this reason that we do not attach much importance to the medical/forensic opinion given regarding the cause of death. The death must have been due to asphyxiation and thereafter, the body had been burnt.

10.We are conscious that there are no eyewitnesses to the occurrence. The entire case of the prosecution rests on circumstantial



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evidence. The approach to be adopted by the court in such cases has been reiterated in *Raja Naykar v. State of Chhattisgarh* (2024) 3 SCC 481.

Paragraph 16 to 18 of the said judgment read as follows :

“16.... The law with regard to conviction on the basis of circumstantial evidence has very well been crystalised in the judgment of this Court in *Sharad Birdhichand Sarda v. State of Maharashtra* [*Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : 1984 INSC 121] , wherein this Court held thus : (SCC pp. 184-85, paras 152-54)

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of M.P.* [*Hanumant v. State of M.P.*, (1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091] This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail v. State of U.P.* [*Tufail v. State of U.P.*, (1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ram Gopal v. State of Maharashtra* [*Ram Gopal v. State of Maharashtra*, (1972) 4 SCC 625] . It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [*Hanumant v. State of M.P.*, (1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091] : (*Hanumant case* [*Hanumant v. State of M.P.*, (1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091] , SCC pp. 76-77, para 12)

‘12. It is well to remember that in cases where the evidence is of a



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

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [*Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] where the observations were made : (SCC p. 807, para 19) ‘19. ... Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions.’

(2) the facts so established should be consistent only with the



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hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

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

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

17. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused “must be” and not merely “may be” proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved”. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable



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ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

18. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.”

We examined the case on hand in the light of the principles laid down above.

11.PW.16 Kalki Anandhakumar is running computer service center at Karur. He is a resident of Thanthondrimalai. He deposed that he would leave his house daily at 09.00 A.M to go to his shop and return home at 09.00 P.M. He would go via Ashok Nagar and cross Sumathi Hospital. He knew the accused and also the father of the first accused (Palanichamy). Palanichamy was residing in a rented house at Ashok Nagar. He also knew the deceased Jayanthi. On 19.10.2013, the family of PW.16 observed the 10th day ceremonies with regard to the death of Vijayakumar, the brother of PW.16. On that date, relatives had arrived. After the ceremonies were over, PW.16 took them to the bus stand in his two wheeler to drop them. While returning home at around 06.15 P.M, he saw the accused coming out of the house of Palanichamy, the father of the first accused in a two wheeler and keeping a gunny bag in the middle. Jayanthi was not seen from the said date. Though



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PW.16 was cross examined on three occasions, his testimony could not be shaken. The accused have not been able to establish that PW.16 had any motive to depose falsely. PW.16 comes out as a natural and credible witness. PW.17 is also a resident of Jeeva Nagar. He is an electrician by avocation. He would go around in his two wheeler in connection with his work. On 19.10.2013, when he was crossing Kethapatty junction road, his two wheeler got punctured and he was stranded. When he was waiting to hitch hike, the accused, who were already known to him, came in a blue colour two wheeler with a gunny bag. When the P.W 17 requested them to take him, they refused citing some emergent work. The said witness even identified the two wheeler (MO.19) as the one ridden by the accused on the occurrence date. Four days later, he came to know that PW.10 was searching for his wife Jayanthi. It was PW.17 who first expressed his suspicion to the police that the accused may have something to do with the disappearance of Jayanthi. He told the police that he saw the accused carrying a gunny bag in a two wheeler. PW.17 also could not be shaken during cross examination. These two witnesses cannot be said to be interested witnesses at all. They are residents of the locality. They both had seen the accused riding a two wheeler carrying a gunny bag on 19.10.2013. PW.16 saw the accused coming out of the house of first accused situated at Ashok Nagar. That the dead body was stuffed into a gunny bag and burnt is too evident. M.O.20 photograph series speaks for itself. In Ex.P1 complaint also, there is a reference to a burnt gunny bag. The remnants of the



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burnt gunny bag were recovered vide seizure mahazar Ex.P3. Thus, the testimony of PW.16 and PW.17 provides the first connecting link in the overall chain of circumstance.

12.The first accused was arrested on 15.12.2013 at 08.00 P.M in the presence of PW.32 VAO. On the same day, his confession was also obtained in the presence of PW.32 and one Ramadass, Village Assistant. The admissible portion of the confession statement has been marked as Ex.P15. As per the disclosure statement, he had given the jewellery robbed from the deceased to one Saravanan (PW.11); he had given the gold chain removed from the body of Jayanthi to Banu (PW.22) who had in turn pledged with Arivazhagan (PW.23). PW.11 produced the gold bangles (4) (MO.16) to the police on 15.12.2013 at 23.30 hrs. They were seized under cover of mahazar Ex.P17. The learned counsel for the appellants would argue that the gold bangles were not seized from the house of Saravanan and it is improbable that Saravanan could have produced the same near midnight in a public road to the police. We do not attach much importance to this contention. The first accused had disclosed to the police that he had given the jewels taken from the deceased to Saravanan. Saravanan was confronted with this information. Saravanan told the police that he himself would produce the bangles and he did not want the police to come to his house as that would cause him embarrassment. It is quite probable that Saravanan chose to cooperate with



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the police as he was afraid that he could be charged for receiving stolen articles. We would not doubt the recovery on the ground suggested by the appellants' counsel. The bangles seized under Ex.P17 were identified by PW.10 as belonging to the deceased Jayanthi. These articles were also subsequently handed over by the jurisdictional Magistrate.

13.PW.22 appears to be the mistress of the first accused though the first accused would claim her to be his wife. PW.22 turned hostile but she admitted that she knew the first accused. It is well settled that the testimony of a witness who has turned hostile need not be rejected in toto. In his disclosure statement, the first accused has stated that he gave the gold chain to Banu (PW.22) who in turn pledged with Arivazhagan (PW.23). Arivazhagan admitted that he knew Banu. He also testified that Banu handed over a gold chain and requested him to raise funds by pledging the same. Arivazhagan gave it to one Senthilkumar (PW.24) who in turn gave it to one Rajendran (PW.25). Rajendran in turn pledged the gold chain with Muthalagu Finance and gave him Rs.50,000/-. When the police approached Arivazhagan (P.W.23) along with Banu and asked for the gold chain, Arivazhagan took Senthilkumar and Rajendran to Muthalagu Finance and redeemed the chain (MO.18) and handed over to the police. This version was corroborated by PW.24 Senthilkumar, PW.25 Rajendran and PW.31 Saravanan of Muthalagu Finance. The learned counsel for the appellants raised a doubt that it is not probable



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that Arivazhagan who is not the owner of the gold chain would have paid Rs. 50,300/- to Muthalagu Finance to redeem the jewellery. We do not find much substance in this submission. Arivazhagan would have realised that he had played a part in pledging the jewellery robbed from a murdered woman. He probably decided that redeeming the jewellery and handing it over to the police would be the best way to come out of the tight corner. Be that as it may, MO. 18 gold chain was identified by PW.10 as belonging to the deceased Jayanthi.

14. Thus, two of the articles, namely, gold bangles (4 in number) and gold chain (M.O.16 and 18) were recovered at the instance of the first accused. They have been identified as belonging to the murdered woman. The first accused was given opportunity to explain these incriminating circumstances during examination under Section 313 of Cr.Pc. The first accused did not come out with any explanation. He characterized the circumstances projected against him as false. It is well settled that motive assumes great significance where a conviction is sought to be predicated on circumstantial case alone [**Nagaraj v State (2015) 4 SCC 739, Babu v State of Kerala (2010) 9 SCC 189**]. PW.11 deposed that the first accused contacted him over the phone and stated that he wanted to pledge/sell his mother's bangles due to some family problems. P.W.11 gave Rs.85,000/- to the first accused after receiving the M.O.16 bangles. The first accused later confirmed to P.W.11 that he had cleared the debts. The testimony of Saravanan also



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furnishes motive for the occurrence. It is seen that the first accused was hard-pressed and was in need of funds. Saravanan is not an interested witness. He was known to the first accused for more than ten years. He had no connection whatsoever with PW.10. There was no need for him to depose falsely. The recovery of these two items and the failure on the part of the first accused to offer any explanation and the testimony of PW.16 that he saw the first accused coming out of his house at Ashok Nagar in a two wheeler with the second accused carrying a gunny bag unerringly point to his guilt. The trial court rightly came to the conclusion that the prosecution had proved the charges for the offences under Sections 302, 392 and 201 of IPC beyond reasonable doubt against the first accused. We fully endorse the reasons given by the trial court for finding the first accused guilty of the charges framed against him.

15.The case against the second accused is not on the same footing. He was arrested on 16.12.2013 at 01.00 PM. He also gave a confession statement. The admissible portion of confession has been marked as Ex.P22. M.O.17 golden ear studs of Jayanthi were recovered from the house of Tamilarasi (PW.26), aunt of A2. The ear studs were recovered under Ex.P24. Tamilarasi turned hostile. Ex.P24 does not mention the place/spot from where the ear studs were recovered. PW.32 who is figuring as witness in Ex.P24 admitted that it has not been mentioned in the seizure mahazar that the ear



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studs were recovered from any particular spot in the house of Tamlarasl. The omission to mention the exact spot from where recovery was made, in our view, throws considerable doubt on the recovery itself. A pair of golden ear studs is a valuable article. It could not have been kept in any open place. Even according to the prosecution, the recovery was made on 16.12.2013 at 16.30 hrs. Jayanthi was killed on 19.10.2013. There is a gap of almost two months. The ear studs would have been kept in a safe place. The prosecution was therefore obliged to specify the particulars of the place from where the recovery was made. Failure to do so is fatal. We are therefore not able to hold the recovery of MO.17 as having been done at the instance of the second accused. In ***Boby vs. State of Kerala (2023 SCC Online SC 50)***, the Hon'ble Supreme Court made it clear that law expects the investigation officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. When the accused while in custody makes a statement that he would lead to the place where he had hidden the object in question, after recording the same, the police party would proceed to the particular place as may be led by the accused and if from that particular place the object in question is discovered, then, that part of the entire process would form the second part of the panchnama. In the case on hand, the particular place from where the recovery was made has not been mentioned in the seizure mahazar. The benefit of this omission would go to the second accused. We are therefore not able to connect the second accused with the offence of murder or robbery.



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The chain of circumstance is not complete as far as the second accused is concerned in respect of charges under Section 302 and 392 of IPC. We therefore hold that the trial court erred in holding that the prosecution proved the case against the second accused beyond reasonable doubt in respect of these two charges. We have no hesitation to acquit the second accused of these two charges. But the trial court was fully justified in finding the second accused guilty of the offence under Section 201 of IPC. PW.16 and PW.17 have seen the second accused riding a two wheeler carrying a gunny bag along with the first accused. The first accused is a driver by profession. He had found employment in Namakkal. The second accused is also an auto driver from Namakkal. Thus, they were known to each other. The second accused had assisted the first accused in disposing of the body of Jayanthi. Jayanthi was constructing a house opposite to the house in which the first accused was residing. PW.7 Chithra who is a construction worker had deposed that Jayanthi used to go to the house of A1 for drinking water and she used to be found therein. Jayanthi is a retired government servant and was a person of means. The prosecution case is that she was wearing gold bangles, gold chain and golden ear studs is probable. She had unsuspectingly entered the house of the first accused when he alone was there. The first accused had gagged her and caused her death due to asphyxiation. The murder had been committed for robbing the jewellery found on the person of the deceased. After her death, the first accused had taken the assistance of the second



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accused to dispose off the body. The body was stuffed into a gunny bag, taken in a two wheeler and dumped in an adjoining village. They had gone to a petrol bunk to buy petrol for the purpose of burning the body. They purchased a can and went to a petrol bunk to buy petrol in the can. But PW. 19, the employee of the petrol bunk declined to fill the can with petrol. Thereupon, the accused asked him to fill the petrol tank of their two wheeler. PW.19 identified both the accused as those who wanted him to fill the petrol in the can. His testimony also could not be shaken during cross examination. Thus, the involvement of the second accused is confirmed not only by PW.16 and 17 but also PW.19. All the three of them are independent witnesses. Therefore, the trial court rightly came to the conclusion that the charge under Section 201 of IPC levelled against both the accused was proved beyond reasonable doubt. We uphold the finding of the trial court in this regard.

16. Thus, the conviction and sentence imposed on the first accused is confirmed. The conviction and sentence imposed on the second accused for the offences under Sections 302 and 392 of IPC is set aside while the conviction and sentence imposed on the second accused under Section 201 of IPC is confirmed. The trial court has given three years rigorous imprisonment as sentence after convicting the second accused for the charge under Section 201 of IPC. The second accused had already undergone the said sentence. He shall be released unless he is wanted in any other case. His bail bond



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shall stand discharged. The trial court is directed to take steps to implement this order. In the result, Crl A(MD)No.449 of 2023 filed by the first accused is dismissed. Crl A(MD)No.103 of 2021 is partly allowed.

[G.R.S., J.] & [R.P., J.]
14.11.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
Skm

To:-

- 1.The Additional Sessions Court,
Fast Track Mahila Court, Karur.
- 2.The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.

Copy to:-

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



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G.R.SWAMINATHAN, J

and

R.POORNIMA, J.

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and

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14.11.2024