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Crl.A(MD)Nos.160 of 2020 & 266 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.09.2023
PRONOUNCED ON : 13.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A(MD)Nos.160 of 2020 and 266 of 2021

Crl.A(MD).No.160/2020

Saravanan

... Appellant/A2

Vs.

State rep. by
The Inspector of Police,
C3 S.S.Colony [L&O] Police Station,
Madurai.
(In Crime No.754 of 2011).

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the conviction and sentence imposed by the Court of the Sessions Judge, Mahalir Neethimandram, Madurai in S.C.No.240 of 2014 on 07.03.2020.

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

Crl.A(MD).No.266/2021



CrL.A(MD)Nos.160 of 2020 & 266 of 2021

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Sakthivel Murugan

... Appellant/A1

Vs.

State rep. by
The Inspector of Police,
C3 S.S.Colony [L&O] Police Station,
Madurai.
(In Crime No.754 of 2011).

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the conviction and sentence passed in S.C.No.240 of 2014 dated 07.03.2020 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai.

For Appellant	:	Ms.Yasmin Begum
For Respondent	:	Mr.A.Thiruvadi Kumar Additional Public Prosecutor

COMMON JUDGMENT

M.NIRMAL KUMAR, J.

These appeals arise against the judgment of learned Sessions Judge, Mahalir Neethimandram, Madurai in Sessions Case No.240 of 2014, dated 07.03.2020 wherein the appellants/A1 and A2 were convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- each in default, to undergo six months Simple Imprisonment for offence under Section 302 r/w. 34 IPC, and to undergo two years rigorous imprisonment



and to pay a fine of Rs.1,000/- each, in default, to undergo two months simple imprisonment for the offence under Section 404 IPC and to undergo seven year rigorous imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo six months simple imprisonment for the offence under Section 201 r/w. 34 IPC. All the sentences are directed to run concurrently.

2.The case of the prosecution is that the deceased Latha, wife of the defacto complainant, Gunasekaran/P.W.1, was employed in Jothi Sakthi Medical near Kokkulappi Bus Stop, Virattipattu. P.W.12 is the owner of the Medical Shop. A1 is a medical representative and friend of PW2, the brother of deceased Latha, used to visit the medical shop and developed acquaintance with her. On 20.04.2011, though Latha had closed the Medical shop in the afternoon for lunch break, she did not return home. P.W.1/husband of the deceased, who usually came home after his work at about 3.30 p.m., found the house locked and his wife was not available. P.W.1 informed the same to P.W.2/elder brother of the deceased and thereafter, P.W.1, P.W.2 and other family members had searched for Latha. When the nearby shop owners were enquired, they informed them that Latha had closed the medical shop for lunch break but had not returned back.



They also made enquiries with the relatives and in known places. On 22.04.2011, a complaint was lodged to the respondent Police. P.W. 29/Special Sub-Inspector of Police received the complaint/Ex.P1 and registered a case of 'Woman Missing' in Crime No.754 of 2011 on 25.04.2011. P.W.30/Inspector of Police took up the case for investigation. On 25.04.2011, P.W.30 received information/Ex.P20 from P.W.4/Village Administrative Officer that an unidentified female dead body was found in a trunk box/M.O.1 near the Madakal Canal. P.W.30 visited the scene of occurrence, opened the trunk box/M.O.1 in the presence of Village Administrative Officer/P.W.4 and Village people and found a defaced female body wearing yellow colour chudidhar, green colour pant and duppatta with both hands tied. The body was that of a 25 years old woman and on enquiry it was identified as Latha, who was a resident of No.47, 3rd Street, Mullai Nagar, Irulandi Devar Colony. P.W.2/elder brother of the deceased, came there and identified the body and confirmed that it was his sister Latha, who went missing from 20.04.2011. Thereafter, the case was altered to offence under Section 302 r/w. 201 IPC.

3.P.W.30 had originally prepared the observation mahazar/Ex.P2,



rough sketch/Ex.P21, examined the witnesses present in the scene of occurrence, seized the articles, conducted inquest and sent the body for Postmortem. Later, P.W.1/husband of the deceased, P.W.2/elder brother, P.W.7/father of the deceased, informed that the deceased Latha was wearing 7½ sovereigns of jewels on the day when she was went missing. Accordingly, the case was further altered for offences under Sections 302, 201, 379(NP) IPC through an alteration report/Ex.P27. P.W.26/Postmortem Doctor who conducted the postmortem, issued postmortem certificate/Ex.P16 as per which, ligature mark was found encircling the neck, fracture of hyoid bone and contusion scalp in the mid frontal region was also found. The final opinion of the Doctor recorded in Ex.P18 was that *“The Deceased would appear to have died of ligature strangulation associated with head injury 5 to 7 days prior to postmortem”*. P.W.30 got transferred on 13.08.2011 and the investigation handed over to one Chandrasekar, Inspector of Police.

4.P.W.31/Inspector of Police took up the further investigation on 22.01.2014, summoned the appellants herein on 13.02.2014, enquired them and thereafter on 14.02.2014, the appellants were arrested in the presence of



P.W.24/Village Administrative Officer and the confession statement of the appellants were recorded and marked as Ex.P28 and Ex.P29. Based on the confession statements, M.O.2 to M.O.5 were recovered in the presence of P.W.21 to P.W.24 and the recovered articles were sent to the Court. P.W.31 had once again enquired P.W.1 and P.W.2, who had identified the jewels of the deceased. The witnesses residing near the house of the deceased, were also enquired. Thereafter, on his transfer P.W.32 took up the investigation, examined the witnesses, collected documents and on conclusion of investigation, filed a final report against the accused for having committed the offences under Sections 376, 302, 379, 201 r/w. 34 IPC.

5.During trial, P.W.1 to P.W.33 examined and Exs.P1 to P39, as well as M.O.1 to M.O.8 were marked on the side of the prosecution. On the side of the defence, no witnesses were examined nor any documents were marked. On conclusion of the trial, the trial Court rendered a judgment of conviction as stated above.

6.The contention of the learned counsel for the appellants are that there was no direct evidence for the occurrence and the case was based on



circumstantial evidence. The Principal of Circumstantial evidence is that chain of events must be so interconnected leading to irresistible conclusion that the accused alone had committed the crime, for which, normally it is the 'Last seen theory' and the explanation of the accused for the other suspicious circumstances and materials against them. In this case, there is no witness for the last seen theory and the recovery theory propounded by the prosecution and the evidence of P.W.21 to P.W.24 are highly doubtful. The evidence of P.W.1/husband of the deceased is that the marriage between P.W.1 and the deceased, who is his uncle's daughter, was solemnized on 25.10.2009. After their marriage, P.W.1 and his wife were residing adjacent to the house of P.W.2, P.W.3, P.W.5 and P.W.6, who are the brothers and parents of the deceased. P.W.5 and P.W.6, parents of P.W.1 were residing with him in the first floor. His wife was employed in Jothi Sakthi Medicals, who used to go to the Medical Shop at 9.00 a.m. and come for lunch at about 1.30 p.m. and again, she used to go to medical shop at 5.00 p.m. in the evening and return back at 8.00 p.m. On 20.04.2011, P.W.1's parents and the parents of the deceased Latha had gone to Dindigul to attend a condolence and his wife/deceased went to Medical shop for her work. When P.W.1 returned home after his work at about 3.30 p.m., he found the



door locked and his wife was not available in the house. He searched for his wife at the Medical shop and when he enquired with the adjacent Tailor shop and Barber Shop, he came to know that his wife had locked the Medical shop for lunch break and thereafter, she had not returned back. P.W.1 informed P.W.2/brother-in-law and later, his parents and inlaws, he had made a search for her, but of no avail. Later on 22.04.2011, P.W.1, along with his brother-in-law/P.W.2 and father-in-law/P.W.7 lodged a complaint, based on which, a Woman Missing case was registered on 25.04.2011. The evidence of P.W.2, P.W.3, P.W.5, P.W.6, P.W.7, P.W.8 & P.W.9 are in conformity with the evidence of P.W.1. From the evidence of these witnesses, it is seen that Latha employed in a Medical shop, attends work from 9.00 a.m. to 1.30 p.m. and again in the evening from 5.00 p.m. to 8.00 p.m. On 20.04.2011, after closing the medical shop for lunch break at 1.30 p.m., the said Latha was found missing. The evidence of P.W.13 to P.W.15, adjacent shop owners confirmed that on 20.04.2011 the said Latha closed the Medical shop at 1.30 p.m. for lunch break and thereafter, did not return back. The evidences of P.W.16 to P.W.18, medical representatives are that the said Latha was working in the Medical shop. Thus, from the evidence of these witnesses, there is nothing to show that the appellants



visited the medical shop and were found in the company of Latha on 20.04.2011 when she was found missing. Hence, there is nothing against the appellants to show that the appellants and Latha were last seen together.

7.The further contention of the learned counsel for the appellants is that the body found near the Canal is defaced and mutilated. The evidence of P.W.2, who identified the body as that of his sister, was merely based on the dress found on the body. The prosecution to confirm the identity had taken the thigh bone and other organs for DNA test and had also proposed to conduct superimposition test to confirm the identity of the said Latha. However, no such test was conducted, which fact was admitted by the Investigating Officers. In view of the above, the identity of the body belong to Latha, is doubtful.

8.The other contention is that in this case the alleged occurrence is said to have taken place in the year 2011 but the recovery of the articles M.O.2 to M.O.5 was made three years thereafter in the year 2014, but the Trial Court placed heavy reliance on the evidence of P.W.21 to P.W.24, which are highly doubtful. He would submit that in this case, the family



members of the deceased Latha P.W.1 to P.W.3 and P.W.5 to P.W.8 had not identified M.O.2 to M.O.5 as that of the deceased Latha, which is claimed to have been worn by her on the day she was found missing.

9.The arrest and confession are also highly doubtful. When P.W. 24/Village Administrative Officer, on the request of the respondent police went to the Police Station on 14.02.2014, he was informed that A1 and A2 were taken to police custody, enquired and their confession statements were recorded. Based on the confession, M.O.2/one pair of silver anklet and one pair of silver toe ring was claimed to have been recovered from PW21 on the same day. Thereafter, though further confession on 27.02.2014, a gold chain was recovered from A2's house and likewise, on the confession of A1, M.O.4/one pair gold stud and M.O.5/gold nose stud were also recovered from P.W.22. The evidence of P.W.21 and P.W.22 in this regard are highly doubtful.

10.P.W.21, who is running a Lathe workshop in Virattipattu, states that on the request of A1, he had received M.O.2 and retained it with him without selling for the past three years, on the fear that it was a stolen



article. Likewise, P.W.22, who hails from Ramanathapuram, states that he is running a Pawn shop and the materials objects M.O.4 and M.O.5 was pledged with him by A1. Both P.W.21 and P.W.22 state that they retained the material objects since they had a doubt that it could be stolen articles. However, neither of them had lodged any complaint nor took any steps in this regard. For the first time, after three years such an explanation has been given and hence their evidence is also highly doubtful. In view of the same, he submitted that there are no acceptable evidence for last seen theory and the recovery of M.O.2 to M.O.5 are highly artificial and doubtful.

11.Further, the relationship between P.W.1 and the said Latha was not cordial. The appellants' case is that the said Latha was having her own way of life and was friendly with others prior to marriage and even after her marriage, she continued with her relationships. Hence, P.W.1 was unhappy with the conduct of the said Latha. Further, P.W.1 informed the Investigating Officer that no further action is required on his complaint. In this case, there is a long delay in informing the missing of jewels and only on 03.08.2011, four months later, P.W.1, P.W.2, P.W.7 and P.W.8 informed to PW30 that the deceased Latha was wearing 7 ½ sovereigns jewels. There



is a long delay of three years in arrest and recovery of M.O.2 to M.O.5, no reason given by PW31, the Investigating Officer. Hence, the arrest and recovery is doubtful. Further, none of the witnesses i.e., PW1, PW2, PW7 and PW8 had identified MO2 to MO5 as that of the deceased Latha. These attending factors were not considered by the Trial Court. In a case of circumstantial evidence, the inference to be drawn is from the established facts that the chain of circumstances is so complete leading to irresistible conclusion that the accused had committed the crime. But in this case, there is no evidence and to complete the chain of circumstances leading to the irresistible conclusion that the appellants had committed the crime. Hence, the finding of the trial Court was not proper and hence he prays for acquittal.

12.To substantiate his arguments, the learned counsel for the appellants relied on the following decisions:

(i) *Smt. Basanti Versus State of Himachal Pradesh reported in 1987 Supreme Court Cases (Cri) 473* for the point that when there is nothing to show that the incriminating articles belonged to the deceased, the accused cannot be convicted and mere suspicion cannot taken place of proof.



(ii)*Babuda Versus State of Rajasthan reported in 1992 Supreme*

Court Cases (Cri) 862 for the point that in a case of circumstantial evidence, it is well settled that the prosecution has to establish each circumstances by independent witnesses and the circumstances so established should form a complete chain without giving room to other hypothesis and should be consistent with his guilt and inconsistent with his innocence. Further for the point that the recoveries which were made after a long period cannot be a clinching circumstances to hold that the person who came into possession of these articles could be the murderer.

(iii)*Abdul Sattar Versus Union Territory, Chandigarh reported in 1985 Supreme Court Cases (Cri) 505* for the points that the recovery after a long time of occurrence cannot be acceptable.

(iv)*Sukhvinder Singh and others Versus State of Punjab reported in 1994 Supreme Court Cases (Cri) 1376* for the point that once the fact have been discovered Section 27 of the Indian Evidence Act cannot again be made use of rediscovering the discovered fact.

(v)*Mohd.Aman and another Versus State of Rajasthan reported in 1997 Supreme Court Cases (Cri) 777* for the point that mere recovery of articles would not be sufficient to convict the accused.



(vi)*State of Rajasthan Versus Teg Bahadur and others reported in*

2005 Supreme Court Cases (Cri) 218 for the point that the family members of the deceased not identified the articles or claimed that the same belonging to the deceased which she was wearing at the time of occurrence.

(vii)*Prakash Versus State of Karnataka reported in (2014) 12*

Supreme Court Cases 133 for the point that mere recovery of some ornaments from some people does not lead to any conclusion that the ornaments so recovered belongs to the deceased.

13.The Additional Public Prosecutor submitted that in this case, the deceased Latha was employed in Jothi Sakthi Medicals, she used to go to work at 9.00 a.m., closes the Medical shop for lunch break by 1.30 p.m, thereafter by 5.00 p.m. in the evening opens the medical shop and work till 8.00 p.m. which is her routine. She married P.W.1, who is her uncle's son on 25.10.2009, who is working in a Call Centre. P.W.1, his wife Latha and PW5 and PW6 were residing near the house of PW2, PW3, PW7 and PW8. On 20.04.2011, the deceased Latha went to the Medical shop and she closed the shop for lunch at 1.30 p.m., but not returned home. After P.W.1 returned home from his work at 3.30 p.m., he found the door locked and his



wife was not available. He enquired with P.W.3/younger brother of the said Latha and informed P.W.2/elder brother about missing of Latha. Thereafter, P.W.1 went to the Medical shop, enquired the nearby shop owners. P.W.13 who was a person in a Tailor shop informed him that on 20.04.2011, the said Latha closed the shop for lunch at 1.30 p.m., but did not return back. When the parents of P.W.1 and the parents of the deceased Latha, who had gone to Dindigul to attend condolence returned home, they were informed about missing of Later after which all of them had searched for her. After they were unable to find her, a complaint was lodged on 22.04.2011. P.W. 29 received the complaint initially and C.S.R.No.172 of 2011 was assigned. On 25.04.20211, a case was registered in Crime No.754 of 2011 for 'Woman Missing'. Thereafter, on the same day P.W.4/Village Administrative Officer gave a complaint/Ex.P20 informing that a defaced and mutilated female body was found in a trunk box near Madakal canal. On getting this information, P.W.30 went to the scene of occurrence and found the body in a trunk box/M.O.1. By that time, P.W.2 on receipt of information came there and identified the body as that of his sister, from her dress. Thereafter, the case was altered to Section 302 r/w. 201 IPC.



14.P.W.30 had then prepared the observation mahazar, rough sketch, conducted inquest, examined the witnesses and recorded their statement and thereafter the body was sent for conducting postmortem. P.W.26/Doctor who had conducted the postmortem had issued the postmortem certificate/Ex.P16 as well as his final opinion/Ex.P18, confirming that the death was due to strangulation and head injury. When it was found that a gold chain, earring, nose stud and Silver Ankets found missing in the body of the deceased, the offence under Section 379 IPC came to be added through a alteration report/Ex.P27. Thereafter, when there was no further progress, the investigation was transferred and entrusted to P.W. 31/Inspector of Police, Thilagarthidal Police Station, who took up further investigation on 22.01.2014 and examined witnesses. A1 and A2 were summoned to appear before P.W.31 on 13.02.2014 and since they gave contradictory versions in the enquiry conducted on 14.02.2014 in Ex.P10 and Ex.P11, they were arrested and confession statements/Ex.P28 and Ex.P29 were recorded in the presence of P.W.24. After remand of the appellants, they were taken to the Police custody on 26.02.2024. During Police custody, further confessions Exs.P28 & P29 were also recorded. Based on the confession statements, M.O.2/Silver Anklet was recovered



from P.W.21, M.O.4, M.O.5 were recovered from P.W.22 and M.O.3 was recovered from the house of A2. On 28.02.2014, P.W.31 further examined P.W.1 and P.W.2, who confirmed that M.O.2 to M.O.5 was that of the deceased Latha. Thereafter, he handed over the investigation to P.W.32, who on conclusion of investigation filed the charge sheet for the offence under Sections 376, 302, 379 and 201 IPC.

15.Before the Trial Court, while 33 witnesses were examined on the side of the prosecution, 39 documents and 8 Material Objects were also marked, on the side of the defence, no were witnesses examined and no documents were marked. The Trial Court on consideration of the evidences and material objects, had convicted the appellants.

16.The Additional Public Prosecutor submitted that in this case, based on the complaint lodged by P.W.1 on 22.04.2011 that his wife was found missing from 20.04.2011, an FIR came to be registered for 'Woman Missing' and subsequently altered for the offences under Section 302 r/w. 201 IPC. From the evidence of P.W.1 to P.W.3, P.W.5 to P.W.8 and adjacent shop owners P.W.13 to P.W.15, it was proved that the deceased



Latha was found missing from 20.04.2011 and later body received in a defaced and mutilated condition on 25.04.2011. The Postmortem Doctor confirms that the death was due to strangulation and head injury. Further, the jewels which the deceased was wearing was also found missing. Hence, from the evidences of these witnesses, it is clear that the deceased was murdered for her jewels. Thereafter, P.W.31 who took up investigation found that the appellants were involved in the case and accordingly arrested them. On their confession, M.O.2, M.O.4 and M.O.5 were recovered from P.W.21 and P.W.22, M.O.3 was recovered from A2 which is also proved. The accused could not give any reason disproving the recovery of M.O.2 to M.O.5.

17.A1, a Medical Representative developed a relationship with the deceased after Latha's marriage with PW1 and when she refused to continue the relationship with A1, he took Latha to his house on 20.04.201 where A1 and A2 committed murder out of revenge and after removing her jewels squeezed the body of the deceased Latha into metal box/M.O.1 and threw it into the Madakal canal. These facts have been proved by the prosecution by cogent evidence. The appellants who had extensively cross examined the



witnesses, were unable to discredit the prosecution witness. The points now raised by the appellants were already raised during trial and the Trial Court by a well reasoned judgment, had rightly convicted the appellants. Hence, prayed for dismissal of the appeals.

18.This Court considered the rival submissions and perused the materials available on record.

19.In this case, the deceased Latha was found missing from 20.04.2011. P.W.1/the husband of the deceased Latha lodged a complaint/Ex.P1 on 22.04.2011 stating that his wife Latha was found missing and he along with P.W.2, P.W.7 and other family members searched her. P.W.29/the Special Sub Inspector of Police received the complaint/Ex.P1 and initially assigned CSR.No.172 of 2011 and thereafter, Woman Missing FIR was registered in Crime No.745 of 2011. P.W.4/VAO received information that a defaced and mutilated female body was found near Madakal Canal and kept in M.O.1. P.W.4 informed the same to P.W. 30. At the same time, P.W.2 received information from P.W.20 about the female body near Madakal canal. P.W.2 visited the scene of occurrence and



identified the body of his sister through her height and her dress.

Thereafter, P.W.30 altered the offence to Section 302 r/w 201 of IPC *vide* alteration report/Ex.P25 on 26.04.2011. P.W.30 in presence of P.W.10 and P.W.11 prepared Observation Mahazar/Ex.P2, Rough Sketch/Ex.P21, examined the witnesses present in the scene of occurrence, recorded their statements, conducted inquest on the body of the deceased, prepared inquest report/Ex.P26 and sent the body for postmortem. P.W.26 who conducted postmortem on the body of the deceased, had issued the postmortem report/Ex.P16 and final opinion/Ex.P18 that “*the deceased would appear to have died of ligature strangulation associated with head injury 5 to 7 days prior to postmortem*”. Thus, the deceased Latha was murdered and the body was placed in M.O.1 near Madakal Canal. To this extent, the case stood proved by the prosecution.

20.In this case, P.W.1, P.W.2, P.W.3, P.W.5, P.W.6, P.W.7 & P.W.8 are the husband, elder brother, younger brother, father-in-law, mother-in-law, father and mother of the deceased respectively. P.W.9, P.W.10, P.W.11, P.W.19 and P.W.20 are the local residents. None of these witnesses stated about having last seen the appellants together with the deceased



Latha. Added to it, their evidence is to the limited extent of Latha employed being in the medical shop of P.W.12, when she used to go at 9.00 a.m., and come for lunch at about 1.30 p.m. and thereafter, she used to go to medical shop at 5.00 p.m. in the evening and return back at 8.00 p.m. They also spoke about the fact that from 20.04.2011, Latha was found missing and on 25.04.2011, her body was found near Madakal canal in M.O.1. Likewise, P.W.13 to P.W.15, the adjacent shop owners of medical shop of P.W.12 confirmed that the deceased Latha worked in the medical shop of P.W.12. P.W.15 confirmed that on 20.04.2011, the deceased Latha closed the shop for lunch break at 1.30 p.m., and did not return back to medical shop. Thus, from these set of evidence, there is nothing to implicate the roll of the appellants of having committed the murder.

21. With regard to the arrest and recovery from the appellants, it is seen that the deceased Latha was found missing from 20.04.2011 and the arrest of the appellants took place on 14.02.2014 i.e., about three years from the date when the deceased Latha went missing. The recovery of M.O.3 was made on 14.02.2014 and recoveries of M.O.2, M.O.4 & M.O.5 were made on 27.02.2014 from P.W.21 to P.W.23. The witness for confession



and recovery is P.W.24/VAO. The initial investigation was carried out by P.W.30 till 13.08.2011. Since he got transferred, the investigation was handed over to his successor Mr.Chandrasekar. The said Chandrasekar, Inspector of Police was not examined in this case. Thereafter, what was the investigation between 13.08.2011 and 13.04.2014, there is absolutely no evidence on the progress of the investigation. P.W.31, the Inspector of Police, Thilagar Thidal Police Station was given incharge of the investigation of the above case on 22.01.2014. P.W.31 took up the investigation and summoned the appellants on 13.02.2014 and enquired them again on 14.02.2014. Finding the appellants giving contradictory version, they were arrested on 14.02.2014. They gave confession statements [Ex.P28 (A1) & Ex.P29 (A2)] in presence of PW24/VAO. Though it is shown as a disclosure statement, nothing was seized on that day, except M.O.2 from PW21. These confession statements were marked through P.W.31, the second Investigating Officer, during trial. The appellants who were remanded to judicial custody were taken into Police custody. On 26.02.2014 again, the confession of A1 and A2 (Exs.P10 & P11) were recorded and the same were titled as 'Restatement'. Pursuant to Exs.P10 & P11, MO3 from A2 and M.O.4 & M.O.5 from PW22 were said



to have been recovered.

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22.In this case, though the confession statements of the appellants (Exs.P28 & P29) were recorded on 14.02.2014 in presence of P.W.24, his attention was not drawn to Exs.P28 & P29. It is seen that through Ex.P8, M.O.2 was seized from P.W.21, M.O.3 was seized through Ex.P12 from A2's house and M.O.4 & M.O.5 were seized through Ex.P9 from P.W.22. The corresponding Form-95 for M.O.2 is Ex.P30, for M.O.3 is Ex.P35 and M.O.4 & M.O.5 is Ex.P36. Form-95 prepared on 14.02.2014, had reached the Court only on 11.03.2014. Similarly, Form-95 for M.O.3 to M.O.5 reached the Court on 28.02.2014, but without the property. Hence, Form-95 was returned for resubmission. Only on 11.03.2014, M.O.2 to M.O.5 were produced before the Court. There is no explanation for the delay in producing M.O.2 to M.O.5.

23.A perusal of the evidences of P.W.21, P.W.22 and P.W.23 along with P.W.24, it is seen that P.W.21's evidence is that A1 handed over M.O.2 to him and asked money for his urgent needs. P.W.21 received M.O.2 and gave cash, but was holding M.O.2 with him since he doubted M.O.2 to be a



stolen property. P.W.21 is neither a moneylender nor a known person to A1. P.W.21 was called for enquiry three years later by P.W.31 who handed over M.O.2 in the Police Station. P.W.21 who is a person who is running a Lathe workshop, confirmed that on 14.02.2014, he was summoned to appear before the Police Station where he handed over M.O.2 in the Police Station. On the contrary, in Ex.P8, it is recorded that M.O.2 was seized from the house of P.W.21. Hence, the recovery of M.O.2 becomes doubtful. Likewise, P.W.22 who hails from Ramanathapuram, was running a Pawn broker shop. His evidence is that he received M.O.4 and M.O.5 from A1 during the month of December, 2011. On 27.02.2014, P.W.24 handed over M.O.4 & M.O.5 to PW31. Except producing M.O.4 & M.O.5, PW22 had not produced any contemporary records or documents to show that A1 pledged M.O.4 & M.O.5 with him and no proper reason or explanation was given for the same. The evidence of P.W.23, a relative of P.W.22 is that he was working in the Pawn broker shop of P.W.22. He gives a different version stating that A1 pledged M.O.4 & M.O.5 for Rs.9,600/- during last of 2011 and two months thereafter, A1 requested to sell M.O.4 & M.O.5. These facts have not been stated by P.W.22. M.O.4 & M.O.5 seized from P.W.22 at Ramanathapuram. P.W.24/VAO, the witness to the confession,



admits that he was not taken to Ramanathapuram during seizure of M.O.4 & M.O.5. Though P.W.21 and P.W.22 attempted to give an explanation that they doubted M.O.2, M.O.4 & M.O.5 might be stolen properties, they retained the same with them for three years. It is strange to see that they have not taken any steps to inform the Police in this regard.

24.As regards recovery of M.O.3 from A2 on 14.02.2014 is concerned, M.O.3 was recovered based on A2's confession (Ex.P29). This confession was recorded in presence of P.W.24/VAO. But P.W.24 does not state anything about Ex.P29 in his evidence and Ex.P29 was marked through P.W.31/Investigating Officer. Hence, the recovery of M.O.3 is also highly doubtful. Added to it, there was three years delay in recovery of M.O.2 to M.O.5.

25.In this case, an attempt was made to show that M.O.2 to M.O.5 belongs to the deceased Latha, but the evidence of P.W.1 is that he was informed about the jewels of his wife Latha by P.W.2. But P.W.2 does not whisper anything about the jewels of his sister and informing P.W.1. P.W.5 and P.W.7, the father-in-law and the father of the deceased state that the deceased was wearing jewels of five sovereigns. But none of the family



members of viz., P.W.1, P.W.2, P.W.3, P.W.5 to P.W.8 had seen or identified M.O.2 to M.O.5 as that of the deceased Latha. Hence, M.O.2 to M.O.5 stands unidentified and unproved as the jewels of deceased Latha. In this case, the majority of the documents reached the Court belatedly and no reason given for the delay in producing M.O.2 to M.O.5 and submitting the documents to the Court.

26.It is admitted by P.W.30 and P.W.31 that in the complaint/Ex.P1 and in the initial statement of the witnesses, none stated about any missing of gold jewels. Only after four months, P.W.1, P.W.2, P.W.7 and P.W.8 informed about missing of jewels and thereafter, Section was altered through the alteration report/Ex.P27. Further, the design and details of jewels were not provided. Thus, the missing of jewels and recovery of M.O. 2 to M.O.5 after three years is clouded with mystery. In view of the above, the recovery of M.O.2 to M.O.5 becomes doubtful and fails to connect it to the appellants.

27.A mere recovery of articles would not be sufficient to convict the accused. This apart, there is an inordinate and unexplained delay of three



years in recovery of M.O.2 to M.O.5.

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28.In the case of “*Bhagat Ram vs. State of Punjab*” reported in *AIR 1954 SC 621*”, the Apex Court had held that in cases of circumstantial evidence, the conclusion drawn from circumstances to show the cumulative effect of the circumstances, must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

29.In the case of “*Padala Veera Reddy vs. State of Andhra Pradesh*” reported in *AIR 1990 SC 79*”, the principle and the test to satisfy, to consider circumstantial evidence is as follows:

“10.(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain



conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

30.Thus, from the facts of the case and the guidelines and the principles laid down by the Apex Court, it is seen that circumstances projected by the prosecution are broken links, inconsistent and cannot stand the scrutiny of double test to prove unerringly that the appellants are the reason and cause for the death of the deceased Latha.

31.In view of the above, this Court finds that the prosecution had miserably failed to prove the case against the appellants beyond all reasonable doubts. Accordingly, the conviction and sentence imposed on the appellants in S.C.No.240 of 2014, dated 07.03.2020 by the learned Sessions Judge, Mahila Neethimandram, Madurai are hereby set aside. The appellants are acquitted from all the charges levelled against them. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.



CrI.A(MD)Nos.160 of 2020 & 266 of 2021

WEB COPY 32.In the result, Criminal Appeals stand allowed.

M.S.R.,J M.N.K.,J
13.03.2024

Index: Yes/No
Speaking order/Non-Speaking Order
Neutral Citation : Yes/No
cse/vv2

To

- 1.The Sessions Judge,
Mahalir Neethimandram,
Madurai.
- 2.The Inspector of Police,
C3 S.S.Colony [L&O] Police Station,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CrL.A(MD)Nos.160 of 2020 & 266 of 2021

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

cse/vv2

PRE-DELIVERY JUDGMENTS IN
CRL.A(MD)Nos.160 of 2020 and 266 of 2021

13.03.2024