



Crl.A.(MD)No.317 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.10.2024

Coram:

**THE HONOURABLE MR. JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MS. JUSTICE R. POORNIMA**

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Kumar @ Soni Kumar

.. Appellant/accused

Vs.

State rep. by

The Inspector of Police,

East Police Station,

Thanjavur, Thanjavur District

Crime No.738/2013

.. Respondent/Respondent

Prayer: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, to acquit the appellant and set aside the judgment made in S.C.No. 443 of 2015 on the file of the learned Principal Sessions Judge / Fast Track Mahila Court, Thanjavur, dated 07.08.2019, to impose the sentence to undergo the accused is convicted under Section 457 I.P.C and sentence to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in



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default, one year simple imprisonment. The accused is convicted under Section 302 I.P.C and sentenced to undergo a life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment. The accused is convicted under Section 382 I.P.C and sentenced to undergo 5 years Rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo one year simple imprisonment. Total fine amount of Rs.16,000/- and allow the Criminal Appeal.

For Appellant : M/s.M.Krishnaveni

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

J U D G M E N T

The accused in S.C.No.443 of 2015, who had been convicted by the Principal Sessions Judge / Fast Track Mahila Court, Thanjavur, by judgment dated 07.08.2019 for offence punishable under Section 449 I.P.C and sentenced to undergo 5 years rigorous imprisonment and fine of Rs.2,000/-, in default, to undergo one year simple imprisonment and for offence punishable under Section 457 I.P.C and sentenced to undergo 5 years



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rigorous imprisonment and fine of Rs.2,000/-, in default, to undergo one year simple imprisonment and convicted for offence punishable under Section 302 I.P.C and sentenced to undergo life imprisonment and fine of Rs.10,000/-, in default, to undergo one year simple imprisonment and further convicted for offence punishable under Section 382 I.P.C and sentenced to undergo 5 years rigorous imprisonment and fine of Rs.2,000/-, in default, to undergo one year simple imprisonment, has filed the present Criminal Appeal.

2. It is the case of the prosecution that the deceased – Backkiam was residing along with her daughter P.W.1-Shanthi, at No.484, Shingari Amman Street, Annasalai, Thanjavur. P.W.1 was running a Gunny bag business in the name of “Shanmuga Vilas Saakku Mandy” at Anna Salai in Thanjavur, opposite to old fish market. It is the case of the prosecution that every day, at around 06.30 am., the deceased would open the shop and clean the shop and also the front of the shop and run the business.

3. It is contended that on 19.03.2013, in the morning at around 06.00 - 06.30 am, the deceased had left her house to open the shop. It is further



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contended that when she entered the shop, she saw the accused and shouted

"திருடன், திருடன்". It is further contended that the accused closed the mouth of the deceased, pushed her neck and held her face and pushed her down. He further sat on her, held her head causing injuries on the right side of the face. He thereafter took an orange colour cloth and held the knot on each side and caused pressure and strangulated her to death. He thereafter took away her jewels, namely, a chain of 5 sovereigns, 2 stone studs, weighing one sovereign, 3 bangles each weighing 2 sovereigns, totally 12 sovereigns.

4. In this connection, P.W.1, the daughter of the deceased was informed by P.W.6 – Mahalakshmi, who is having a tea shop, next to the shop of the deceased that the deceased had not opened the shop to take the tea, which was kept on the bench by her husband- P.W.7 Selvaraj. Immediately, P.W.1 went to the shop. She then found that there was a crowd in front of the shop. The crowd was there at around 8.00 am. The police had also come to that place.

5. Thereafter, P.W.1 had went to the police station at 10.00 am and gave a complaint. On the basis of that complaint, P.W.19- Selvaraj, Sub



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Inspector of Police, registered F.I.R in Crime No.738 of 2013 at around 11.00 am, on 19.09.2013 for the offences punishable under Sections 302 and 380 I.P.C. The missing jewels were mentioned in the complaint. This F.I.R was marked as Ex.P8, during the trial.

6. The investigation was taken over by P.W.24 - Rajagopal, who was the Inspector of Police at Thanjavur East Police Station. He went over to the scene of crime, namely, the shop and prepared observation mahazer - Ex.P2 and rough sketch Ex.P12. He collected blood stained cement pieces (not produced as a material object) and cement pieces without blood stained (again not produced as a material object), at around 12.30 in the afternoon, in the presence of the witnesses Paulpandian - P.W.14 and Kalaichamy (not examined). In his chief examination, he stated that he had forwarded both the said material objects under Form - 95 to the Court. He also prepared a mahazer for seizure of a copper ring (M.O.6), gold bangle (M.O.5), a white and orange and green colour cloth with blood stains (M.O.7). He then recorded the statements of Shanthi – P.W.1, Parthiban – P.W.2, (husband of P.W.1), Selvaraj – P.W.7, Marimuthu - P.W.8, Kannan (not examined), Paranthaman - P.W.4, Anand - P.W.5, Mahalakshmi - P.W.6, Paulpandian



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– P.W.14 and Kalaichamy (not examined). Thereafter, in the presence of Panchayatars he conducted inquest over the dead body. The inquest report was marked as Ex.P11. He then forwarded the dead body for post mortem through Special Sub Inspector of Police, viz., Baskaran - P.W.23. He then recorded the statements of further witnesses.

7. After nearly two years, on 04.07.2015, he arrested the accused near Thanjavur Kodimarathu Auto Stand in the morning at 11.00 am. He identified the accused since a person was standing suspiciously and found that his name was Soni, who was already an accused in Thanjavur East Police Station. Thereafter, in the presence of the Village Administrative Officer – Prabakaran (P.W.16) and Village Assistant – Ganesan (not examined), he recorded the confession statement of the accused. He then recovered a 5 sovereigns of gold chain from the accused, which was produced as M.O.1. He then recovered further jewellery, namely 2 sovereigns of bangles - M.O.2 (3 numbers) and one sovereign of one pair of stone studs (M.O.3) and forwarded the same under Form – 95 to the jurisdictional Magistrate. He identified the inquest report as Ex.P11 and his rough sketch - Ex.P12 and the Form – 91 through which he forwarded the



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Material Objects to the Court as Ex.P13 series.

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8. The investigation was then continued by P.W.25 – Chitti Babu. He filed an alternation report which was marked as Ex.P14. He then concluded the investigation and filed charge sheet before the Judicial Magistrate No.I, Thanjavur, charging the accused for commission of offences punishable under Sections 449, 457, 302 and 382 I.P.C. This final report was taken cognizance by the Judicial Magistrate No.I, Thanjavur as P.R.C.No.63 of 2015. The learned Judicial Magistrate after completing formalities under Section 207, 208 and 209 Cr.P.C, finding that the offence under Section 302 I.P.C is triable exclusively by a Court of Sessions, committed the case before the Principal Sessions Court, Thanjavur. It was subsequently made over to the Sessions Judge, Fast Track Mahila Court, Thanjavur and taken on file as S.C.No.443 of 2015. Charges were framed against the accused, charging him for commission of offences punishable under Sections 457, 449, 302 and 382 I.P.C. He denied the charges and claimed to be tried. The prosecution was then called upon to establish the charges beyond reasonable doubts.



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9. The prosecution examined P.W.1- P.W.25 witnesses and marked Exhibits Ex.P1 – Ex.P14 documents and produced M.O.1 – M.O.10, material objects. On completion of the recording of evidence of the prosecution witnesses, the incriminating portions of the evidences were put to the accused and his statements were recorded under Section 313 (1) (b) of Cr.P.C. The accused did not examine any witnesses. He did not mark any documents.

10. After analyzing the evidence available on record, the learned Sessions Judge / Fast Track Court, Mahila Court, Thanjavur, by judgment dated 07.08.2019 convicted the accused for offences punishable under Sections 449, 457, 302 and 382 I.P.C and sentenced him as stated above. Questioning that particular conviction and sentence, the present Criminal Appeal has been filed.

11. Heard arguments advanced by Ms.M.Krishnaveni, learned counsel for the appellant and Mr.T.Senthil Kumar, learned Additional Public Prosecutor on behalf of the respondent.



12. The learned counsel for the appellant took the Court through the facts of the case and pointed out that the incident is said to have taken place on 19.09.2013. The accused was arrested only on 04.07.2015. There were no eye witnesses to the occurrence. The learned counsel pointed out that during the course of investigation, the Investigating Officer had not lifted finger prints from the scene of occurrence. The learned counsel questioned the procedure adopted in not taking the finger prints, immediately after the crime was noticed and the body was detected. It was evident that the death was homicide. P.W.1, daughter of the deceased had also identified that jewellerys were missing. It was contended by the learned counsel that failure to left the finger prints from the scene of crime, was prejudicial to the accused, as there was no evidence directly connecting the accused with the occurrence.

13. It was then pointed out that the accused was arrested on 04.07.2015 and was taken to the Police Station. In this connection, the accused had been identified by P.W.9 - Babu @ Krishnaraj, who was an Auto driver. The learned counsel pointed out the evidence of P.W.9, who stated that he was examined three days after the incident and at that time, he



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had informed the investigating officer that a person was seen running from a lane and that he would be able to identify that person. The evidence in chief was recorded after 1 ½ years. He was summoned to the police station where the accused was present. He stated that the investigating officer pointed out the accused and asked the witness, whether he knew the accused. The witness identified the accused. The learned counsel pointed out the improbability of such identification.

14. The learned counsel further pointed out the evidence of P.W.10 – Lakshmanan, who in his chief examination, stated that on 04.07.2015, he was taken to the Police Station and that the police men pointed out to the person standing there and stated that the said person was Soni. P.W.10 also identified that person as the individual who had run whom that he and Babu had been seen.

15. Babu was examined as P.W.9.

16. The learned counsel for the appellant / accused pointed out the evidence of this witness and the evidence of P.W.9 and argued that the



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identification of the accused in this manner cannot withstand the scrutiny of the Court. If the accused had been arrested and the respondent had seek identification from alleged eye witnesses, the only manner is to conduct a test accused identification parade. But, to point out the accused in the police station and state his name and ask the witnesses to identify the accused in the police station cannot be stated to be the correct procedure.

17. It is noted that P.W.9 and P.W.10 were not witnesses to the offence. They had only seen a person running from a Lane. This was about 1 ½ years before the accused was identified or arrested.

18. It was contended by the learned counsel that this particular evidence of P.W.9 and P.W.10 cannot automatically connect the accused to the offence of either murder or house breaking or of robbery.

19. The learned counsel for the appellant / accused then pointed out the evidence of P.W.6 and P.W.7 Mahalakshmi and Selvaraj. They were running a tea shop near the shop of the deceased. P.W.6 stated that her husband P.W.7 normally used to take tea to the shop of the deceased. On



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19.09.2013, he had left the tea outside the shop, but the deceased did not come out to take the tea. He informed this to P.W.6. She further informed this to P.W.1. The evidence of P.W.6 and P.W.7, it only pointed out that the deceased was not available in the shop and did not open the shop.

20. The learned counsel further pointed out that it is the case of the prosecution that the accused is said to have entered into the shop through the roof. The investigating officer had admitted during his cross examination that photographs had been taken in the scene of occurrence, but the said photographs were not forwarded to the Court. According to the learned counsel this is direct suppression of material evidence before the Court.

21. The learned counsel then pointed out that the evidence of P.W.17, who was the police official who came with a sniffer dog. The dog went till the Auto stand. This was about 1 ½ years prior to the arrest of the accused. This would not indicate that the accused was responsible for the offence.



22. The learned counsel further pointed out the evidence of P.W.22, the Doctor who had conducted post mortem, who stated that the death could have occurred between 12- 24 hours prior to the time on which the post mortem was conducted. The learned counsel therefore stated that the incident could not have happened at 06.00 – 6.30 in the morning hours. The learned counsel pointed out all these aspects and stated that the prosecution had failed to establish the arrest of the accused, the recovery of the gold jewellery and to produce the photographs which had been taken in the scene of occurrence, and had not established the identity of the accused in manner known to law.

23. With respect of recovery, the evidence of P.W.15 was pointed out that after 1 ½ years, 5 sovereigns of gold chain, M.O.1 was recovered from the shirt pocket of the accused. The learned counsel pointed out that it is totally improbable that the accused would have been going around with 5 sovereigns of gold chain for 1 ½ years and take it out when demanded by the investigating officer. Jewels were also recovered from the sisters of the accused. The learned counsel pointed out that the said sister had not been examined as witness. It was also pointed out that P.W.16, was not the



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jurisdictional Village Administrative Officer and that the investigating officer had utilized P.W.16, move out of any compulsion. Pointing out all these aspects, it was argued by the learned counsel that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt and it was therefore urged that the accused is entitled for acquittal and that the judgment of conviction by the trial court should be set aside.

24. Mr.T.Senthil Kumar, learned Additional Public Prosecutor contested the points raised by the learned counsel for the appellant. The learned Additional Public Prosecutor pointed that the witnesses were examined in chief and then after about 6 months they had been recalled for cross examination. The learned Additional Public Prosecutor stated that therefore, reliance should not be placed on any minor contradictions in the statements of the witnesses and that the evidence as a whole as projected by the prosecution, should be considered by this Court. It was pointed out that in the confession of the accused, he had admitted to commission of offences of similar nature, namely, climbing down from the roof of deserted shops and other places, and committing robbery.



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25. In this instant case, he pointed out that it is the case of the prosecution that when the deceased opened the door she found the accused already inside the shop and shouted out “திருடன், திருடன்” and that the accused then strangled her with cloth, which cloth had been recovered and produced as M.O. 7. It was blood stained.

26. The learned Additional Public Prosecutor stated that the accused had antecedents of committing similar offence and therefore had been taken into custody of the investigating officer. On his confession a gold chain had been recovered. It was pointed out that the jewellery had also been identified.

27. The learned Additional Public Prosecutor also stated that the incident had happened between 06.00- 06.30 am in the morning. P.W.1 arrived at the particular place around 08.30 am. She lodged the complaint at 11.00 am. It was therefore stated that there was no delay in lodging the complaint.



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28. The learned Additional Public Prosecutor further pointed out that the material objects had been forwarded to the Court immediately, when they were seized. It was argued that the prosecution proved the case based on circumstantial evidence and had established the antecedents of the accused that he was in the habit of committing thefts of climbing down the roof of deserted shops. A similar *modus operadi* was used in the present case also. There was recovery of stolen jewellery. There was identification of the accused by independent witnesses. The learned Additional Public Prosecutor therefore argued that the prosecution had formed a chain directly linking the accused to the offence therefore, urged that this Court must dismiss the Appeal.

29. We have carefully considered the arguments advanced and perused the records.

30. The case of the prosecution is based on circumstantial evidence. It is the case of the prosecution that the deceased and her daughter, P.W.1 were running a business in old gunny bags opposite to old fish market,



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Thanjavur. It is the habit of the deceased at around 06.00-6.30 am to open and clean the shop and commence the business.

31. On 19.09.2013, as usual the deceased had left her home at 06.00 – 06.30 in the morning. This was noticed from by P.W.1, her daughter.

32. Thereafter, the evidence of P.W.6 and P.W.7 become relevant. They are running a tea shop close to the shop of the deceased. It is the usual practice of P.W.7 to keep a glass of tea outside the shop of the deceased. On that particular date, he kept the tea. When the tea was not taken up by the deceased, he informed this fact to his wife P.W.6.

33. P.W.6 informed this fact to P.W.1. After receiving this information, P.W.1 and her husband went over to the shop. They found a crowd in the place. The police were also there. When the shop was looked into, they found the dead body of the deceased.

34. The post mortem was conducted by Dr. Tamilmani - P.W.22. He issued post mortem Certificate - Ex.P9. In the post mortem certificate, it



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had been stated that there was a circular injury at the neck measuring 39 inches x 2 cms. Further, in the backside, there was a injury to an extent of 7 cms. There was a further injury in the lower side of the neck measuring 6 cms x 7 cms. All the injuries were red in colour. It was found that the hyoid bone had been fractured. There was evidence of suffocation.

35. In the post mortem certificate, the opinion given was that the deceased had died of asphyxia, due to ligature strangulation. The nature of injuries reflected that death was homicidal in nature. P.W.1 also stated that jewellery were missing. Therefore, it could be safely concluded that it was murder for gain.

36. The issue to be now determined by this Court is whether on the basis of the evidence produced, this Court could come to a definite conclusion that it was the accused, who had committed the offence.

37. The evidence which the prosecution relied to connect the accused is the recovery of a gold chain, M.O.1 from the shirt pocket of the accused. It must be kept in mind that the accused was arrested near the auto stand on 04.07.2015, nearly 22 months after the incident. He was not arrested



because his finger prints matched with the finger prints lifted in the scene of occurrence.

38. We do not understand why the Investigating Officer had not lifted the finger prints from the scene of occurrence. They had visited the scene of occurrence within 2 - 3 hours from the commission of the offence. From the scene of occurrence, M.O.7, the cloth, which was blood stained and which was, according to the prosecution, used for strangulation was also seized. The blood stains in the cloth was not tested to determine whether it was a human blood and to determine the blood group.

39. It is the further case of prosecution that the accused had been identified by the prosecution only because he had antecedents of jumping through roofs and committing robbery in deserted shops. But, unfortunately, even though the Investigating Officer admitted in cross examination that photographs were taken from the scene of crime, the photographs had not been produced before the Court. The Investigating Officer - P.W.24 admitted that he had not forwarded the photographs to the Court.



40. P.W.24 had also prepared Ex.P2 - observation mahazer and Ex.P12 - rough sketch. A perusal of Ex.P12 - rough sketch, does not indicate that the roof had been broken to enable a human person to come down from the roof. This only indicates that the Investigating Officer – P.W.24 had not even observed the portion from which the entry was made by the accused.

41. He had taken photographs, but he had not produced the photographs before the Court. He had drawn a rough sketch, but, did not indicate that the roof was broken to enable an individual to come into the shop. He had also not stated that the accused had broken open the roof and entered into the shop.

42. It is further seen that as per the prosecution, the time when the occurrence happened was around 06.00 – 06.30 in the morning. In the inquest report, Ex.P.11, it had been stated that the body was discovered only at around 7.30 in the morning. The dog squad had however been informed, according to PW17, at round 06.30 in the morning which is improbable.



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43. It is also seen that the Doctor who conducted post mortem, P.W. 22 had stated that the homicide would have happened about 12-24 hours prior to the commencement of the post mortem which was around 03.25 pm. This would indicate that the approximate time when the homicide would have happened would be around 03.30 in the morning. The deceased had however left the house only at around 06.00 – 06.30 am as per P.W.1.

44. Further the manner in which the accused was identified in the police station is strongly deprecated by us. He had been produced in the police station and P.W.9 and P.W.10 were called over to the police station. It is in the evidence of P.W.10 that the police men pointed out the accused and stated that he is the accused. Both P.W.9 and P.W.10 had not witnessed the offence. In their chief cross examination they only stated that they saw an individual running in the bye lane and that they would identify him. They asked to identify him after 1 ½ years. We reject their evidence.

45. It is further stated that though the accused was arrested nearly after 2 years, he still had M.O.1 – 5 sovereigns of gold chain in his shirt



pocket. We reject this theory of recovery of M.O.1.

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46. The learned Additional Public Prosecutor stated that the accused had been sent to custody, in the interregnum period in yet another case. But, it is unbelievable that the accused was having a 5 sovereign chain in his shirt pocket for nearly two years went to jail, came out and continued to keep the gold chain in his shirt pocket.

47. It is thus seen that the arrest itself is suspect. The recovery of gold chain M.O.1 is not believed by this Court.

48. Further, jewellery had also been recovered from the sister of the accused on the confession of the accused. That particular sister had not been examined as a witness.

49. It must also be mentioned that P.W.16, the Village Administrative Officer is not the jurisdictional Village Administrative Officer. It is always prudent that for the purpose of investigation, the investigating officer utilizes the services of the Village Administrative



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Officer of that particular jurisdiction, unless the said Village Administrative Officer is not available.

50. The above facts would indicate that the prosecution had not established even one link connecting the accused with the offence.

51. The offence happened in the early morning at around 06.00 – 06.30 am. There were no eye witnesses. The only reason why the accused had been charged with the offence, according to prosecution is that, he had the habit of climbing down the roof and entering the shops and committing robbery in deserted shops. But, in the instant case, the fact of climbing down the roof is not shown in Ex.P.12, rough sketch. The photographs which had been taken in that place by P.W.24 had not been forwarded to the Court. The accused was arrested in an auto stand after nearly about 2 years and later he was taken to the police station and in the police station, he was pointed out by the police officials to P.W.9 and P.W.10, who promptly identified him as the person whom they saw nearly two years earlier running away. The identification fails. The recovery fails. The arrest fails.



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52. In view of all these reasons, we hold that the prosecution had not established the case, beyond doubt. As a matter of fact, there is zero evidence as against the appellant / accused herein. We are not able to understand the basis on which the accused was convicted by the trial Court. We are of the very firm opinion that the conviction and sentence necessarily has to be set aside.

53. Accordingly, the judgment of the trial Court dated 07.08.2019 in S.C.No.443 of 2015 is set aside. The Criminal Appeal stands allowed. The bail bonds executed and to be cancelled. The fine amount paid should be refunded to the accused.

(C.V.K.J) & (R.P.J)
16.10.2024

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Internet:Yes/No
NCC : Yes/No
LS



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- To
- 1.The 3rd Additional Sessions Judge,
Tirunelveli
 - 2.The Inspector of Police,
Kalakadu Police Station,
Tirunelveli District.
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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C.V. KARTHIKEYAN,J.
AND
R. POORNIMA,J.

LS

judgment made in
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16.10.2024