



Crl.A.(MD)No.69 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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State Rep. By
The Inspector of Police,
Tirunelveli Town Police Station,
(Pettai P.S.Crime No425/2015)

... Appellant / Complainant

Vs.

Sriram

... Respondent / Accused

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the Judgment and acquittal order passed by the learned I Additional Sessions Judge, Tirunelveli dated 22.10.2018 in S.C.No.332 of 2016 and order to convict the respondent / accused for the offences under Sections 449, 302 & 380 of IPC.

For Appellant : Mr.T.Senthil Kumar
Additional Public Prosecutor

For Respondent : Mr.H.Mohamed Imran
for M/s.Ajmal Associates



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JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

The State has preferred this appeal against the Judgment dated 22.10.2018 in S.C.No.332 of 2016 on the file of the 1st Additional Sessions Judge, Tirunelveli acquitting the respondent herein of the offences with which he was charged.

2. The case of the prosecution is that on 15.08.2015, at around 11.30 pm., the respondent herein trespassed into the house of the Gunapushanam (deceased), murdered her and committed theft of two sovereign gold jewelry and her mobile phone. According to the prosecution, the deceased Gunapushanam was a spinster and was residing alone. On 16.08.2015, Gunapushanam was lying dead in her house. The body was discovered by P.W.1-close relative. She lodged Ex.P1-complaint before the Pettai Police Station. Crime No.425 of 2015 was registered for the offences under Sections 302 & 380 of IPC. P.W.14 took up investigation and visited the spot. He prepared observation mahazar and seized the articles found in the scene of occurrence under a



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seizure mahazar. He caused inquest to be conducted. The body was then sent to Tirunelveli Medical College Hospital for conducting postmortem.

P.W.14 examined witnesses and recorded their statements. On 03.01.2016, at around 23:30 hours, when he was engaged in checking of vehicles near kullathankarai Pallivasal, he saw a person coming in a two wheeler who fled upon seeing the police party. He detained him and enquired. The said individual was none other than the accused respondent herein. He gave voluntary confession in the presence of the witnesses. Based on the disclosure statement, the jewelry, mobile phone and the key belonging to the deceased were recovered. After examining few more witnesses, the final report was filed before the Judicial Magistrate No.V, Tirunelveli. It was taken on file in P.R.C.No.51 of 2016. Since the offences were exclusively triable by the Sessions Judge, the case was committed to the Principal Sessions Judge, Tirunelveli. It was made over to the first Additional Sessions Judge, Tirunelveli in S.C.No.332 of 2016. The prosecution examined as many as 14 witnesses and marked Ex.P1 to Ex.P23. M.O.1 to M.O.12 were marked. The incriminating circumstances were put to the accused under Section 313 C.r.PC and he characterized them as false. On the side of the accused,



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no evidence was adduced. After hearing both sides and examining the evidence on record, the learned trial Judge acquitted the accused by the impugned Judgment. Questioning the same, this appeal has been filed by the State.

3. The question that calls for consideration is whether the Judgment of acquittal rendered by the court below warrants interference.

4. The learned Additional Public Prosecutor for the State reiterated all the contentions set out in the memorandum of grounds of appeal and called upon this Court to set aside the impugned Judgment and find the respondent guilty since the prosecution has established its case beyond reasonable doubt.

5. Per contra, the learned counsel appearing for the respondent submitted that the impugned Judgment is well reasoned and that it does not require interference. They pressed for dismissal of the appeal.

6. We carefully considered the rival contentions and went through the evidence on record. Since there are no eye witnesses to the occurrence, the case against the accused / respondent rests entirely on



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recovery. According to P.W.14, on 03.01.2016, when he was engaged in vehicle inspection, he found the movement of the accused to be suspicious and when he was detained and interrogated, he voluntarily gave Ex.P7- confession. Admissible portion of the said confession is to the effect that the accused offered to point out the person to whom the chain stolen from the deceased Gunapushanam had been pledged. Ex.P10 is the recovery mahazar. M.O.3-gold chain was recovered from one Samuthirapandi. The said Samuthira Pandi was examined as P.W.9. He deposed that on 15.08.2015, the accused came with P.W.8-Kumaravel @ John and pledged the said gold chain for a sum of Rs.10,000/-. P.W.8 deposed that he knew the accused and that on 15.08.2015 at around 1:00 pm., the accused came to his house and gave him the said gold chain and asked him for a sum of Rs.25,000/-. P.W.8 testified that he took the accused to P.W.9 Samuthirapandi and gave him Rs.10,000/- by pledging the same. P.W.8 as well as P.W.9 identified M.O.3-gold chain which was pledged. P.W.1-defacto complainant identified M.O.3-gold chain owned by the deceased Gunapushanam.



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7. The question that calls for consideration is whether the respondent can be convicted solely on the strength of such recovery. As already noted, the recovery of M.O.3 was pursuant to the confession said to have been made by the accused. P.W.7-Sheik Syed Ali is a witness to the confession. He deposed in cross-examination that the accused was viewed in a terrified condition. He further stated that the confession was dictated by the Inspector of Police and written by the head constable. He further stated that the confession was drafted by the head constable. The court below has given a finding that the voluntary nature of confession has not been established. Confession is something that should be voluntarily made by the accused. What is admissible in the confession is the fact disclosed by the accused that leads to discovery in terms of Section 27 of the Indian Evidence Act. If the confession itself is shown to be involuntary, then, recovery made pursuant to such confession also becomes doubtful. The Hon'ble Supreme Court in the decision reported in **(2019) 3 SCC 770 (Ashish Jain v. Makrand Singh)** held as follows:

24. “...Once a confessional statement of the accused on facts is found to be involuntary, it is hit by Article 20(3) of the Constitution, rendering such a confession



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inadmissible. There is an embargo on accepting self-incriminatory evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. **However, if such a statement is made under undue pressure and compulsion from the investigating officer, as in the present matter, the evidentiary value of such a statement leading to the recovery is nullified.”**

In this case, P.W.7-confession witness had stated that it was the head constable who wrote the confession and that the investigation officer dictated the same. P.W.7 has not been declared as hostile witness. He was not re-examined also. Therefore, the testimony of P.W.7 is fatal to the prosecution case. When the entire case against the accused rests on confession and recovery, and the confession has been shown to be involuntary, the entire foundation of the prosecution case gets undermined.

8.The Hon'ble Supreme Court in its decision reported in **2024 SCC OnLine SC 523 (*Bhupatbhai Bachubhai Chavda & Anr. v. State of Gujarat*)** held that the Appellate Court can interfere with the order of



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acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt and that the Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. Thus, unless we find the judgment of acquittal to be perverse, we cannot interfere with the order of acquittal. The judgement of the Court below acquitting the accused cannot be said to be perverse. Interference with such well reasoned Judgment is not warranted.

9. The criminal appeal is dismissed. No costs.

(G.R.S. J.) & (R.P. J.)
11.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The I Additional Sessions Judge, Tirunelveli.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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3.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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