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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2025

CORAM :

The Hon'ble Mr.JUSTICE N.SATHISH KUMAR
and
The Hon'ble Mr.Justice M.JOTHIRAMAN

Criminal Appeal Nos.200 of 2019 and 442 of 2021

Crl.A.No.200 of 2019 :

Dhavamani .. Appellant

Vs.

1.State represented by
Inspector of Police,
Kadathur Police Station,
Erode District
Crime No.253 of 2017

2.Suresh @ Lingeshwaran
3.Kanammal .. Respondents

Crl.A.No.442 of 2021 :

State rep by
The Inspector of Police,
Kadathur Police Station,
Erode District
(Crime No.253 of 2017) .. Appellant

Vs.

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1.Suresh @ Lingeshwaran
2.Kannammal .. Respondents

Crl.A.No.200 of 2019 has been filed under Section 372 Cr.P.C. seeking to set aside the order of acquittal dated 25.09.2018 passed in S.C.No.2 of 2018 by the learned Sessions Judge (Fast Track Mahila Court), Erode, Erode District and convict the accused and pass such other or other orders as this Hon'ble Court may deem fit and proper under the above circumstance of the case and thus render justice.

Crl.A.No.442 of 2021 has been filed under Section 378 Cr.P.C. seeking to set aside the judgment of acquittal of respondents / accused [A-1 and A-2] passed in S.C.No.2/2018 dated 25.09.2018 by the learned Sessions Court, Fast Track Mahila Court, Erode, Erode District, convict them in accordance with law and thus render justice.

For Appellants : Mr.V.Gopinath, Senior Advocate
for Mr.Swami Subramanian
in Crl.A.No.200 of 2019

Mr.A.Damodharan,
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem
in Crl.A.No.442 of 2021

For Respondents : Mr.A.K.Kumarasamy, Senior Advocate
for Mr.S.Kaithamalai Kumaran
for RR2 & 3 in Crl.A.No.200 of 2019
and
for RR1 & 2 in Crl.A.No.442 of 2021

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Mr.A.Damodharan,
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem
for R1 in Crl.A.No.200 of 2019

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COMMON JUDGEMENT

(Judgment of the Court was made by **N.SATHISH KUMAR, J**.)

Aggrieved over the acquittal of the accused by a judgment, dated 25.09.2018 made in S.C.No.2 of 2018 on the file of the Sessions Court (Fast Track Mahila Court), Erode, Erode District, the appellant / defacto complainant has filed Crl.A.No.200 of 2019 and the State has preferred Crl.A.No.442 of 2021. A-1 has faced charges under Sections 498A, 120B, 302 and 203 IPC and A-2 was charged under sections 120B, 302 read with section 120B and 203 IPC.

Facts of the prosecution case :

2.The brief facts of the prosecution case is as follows:

2.1.The deceased Manjula is the wife of A-1 Suresh @ Lingeshwaran. A2 Kannammal is the mother of A-1. According to P.W.1, who is the mother of the deceased, the marriage between deceased and A-1 was solemnised on 07.06.2015 at Eengur Thambirati Amman temple. At the time of marriage, A-1 was working as a software

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engineer in Vaika Technology at Coimbatore and at the time of marriage, 30 sovereigns of jewels and 3 sovereigns of bracelet for A-1 and other household articles were given to the accused. After marriage, A-1 and deceased were residing in a joint family at Ayipalayam. Since the deceased faced certain difficulties in going to job from there, a separate residence was set up at Coimbatore after three months. At that time also, household articles at the costs of Rs.50,000/- were given. The son of P.W.1 and P.W.1's sister son, namely P.W.2 were also staying along with deceased as they were studying there. A-1 used to quarrel with the deceased and demanded to get money from P.W.1 and there were frequent quarrel. From the wedlock, a girl child was born to A-1 and deceased. During the month of June, 2017, the deceased came to the house of P.W.1 for attending marriage of a relative and at that time, she left all her jewels with P.W.1. Thereafter, A-1 demanded the jewels back and therefore, there were quarrel arose between them. On 03.07.2017, A-1 came to the house in intoxicated stage and quarreled with deceased. Thereafter, P.W.1 along with her relatives, went to Ayipalayam and handed over the jewels to the accused. On 17.08.2017, P.W.1 called her daughter. At that time, the deceased Manjula informed P.W.1 that she

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was afraid of living with the A1 as he was treating her badly and deceased was pacified by P.W.1. On the next day, P.W.1 called her daughter over phone but she did not pick the phone. Later, P.W.2 (P.W.1's sister son) had informed P.W.1 that A-1 has informed him that the deceased had committed suicide and was taken to the hospital. Immediately, P.W.1 and her husband and other relatives rushed to the house of A-1 where the dead body was kept. On finding some contusion on the neck, P.W.1 suspected some foul play and after all the relatives came, they decided to give a complaint. Accordingly, they lodged Ex.P.1 complaint with the police.

2.2.P.W.2, who is sister's son of P.W.1, on hearing the news from A-1 that the deceased had committed suicide and after informing the news to P.W.1, went to A-1's house. At that time, when he went there, the body of the deceased was kept in the home. When P.W.2 enquired A-1, he was informed that the deceased committed suicide. P.W.3 has witnessed A-1 demanding jewels from P.W.1. P.W.17, Sub Inspector of Police received the Ex.P.1 complaint and registered the crime in Crime No.253 of 2017 under section 174 Cr.P.C. (hanging) and FIR which was registered under Ex.P.16, was forwarded to P.W.16, Revenue Divisional

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Officer to conduct inquest and the copies were also sent to superior officers.

2.3.P.W.16, RDO conducted inquest on the dead body of the deceased and recorded the statements of witnesses and prepared the inquest report Ex.P.13. He opined that the death of the deceased was not due to the cruelty in connection with the dowry demand. However, he has recommended for further investigation. P.W.19 Deputy Superintendent of Police took up the investigation on 19.08.2017 and went to the place of occurrence at about 10.15 a.m. He observed the place of occurrence and prepared Ex.P.2 observation mahazar and Ex.P.18, rough sketch in the presence of P.W.5 VAO and one Thirumoorthy and also engaged the service of the photographer P.W.15 to take photographs and recorded the statements. He has also given requisition to Forensic Science department.

2.4.P.W.13, Assistant Director of Forensic science department, Coimbatore, on receiving the intimation, went to the place of occurrence and inspected the same and found that there was no damage whatsoever in the fan which was allegedly used for hanging. She has also further deposed that the parts of the ceiling fan are not damaged and the dust

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was very much present on the fan. P.W.11 medical officer in Abi S.K. Hospital deposed that on 18.08.2017 at about 10.00 p.m., the deceased was brought to the hospital by A-1 and informed him that she has breathing difficulty. On examination, he found the deceased died and referred the deceased to Gobichettipalayam Government hospital.

2.5.P.W.14 medical officer attached to Gobichettipalayam Government hospital had deposed that the dead body of the deceased was brought to the hospital on 19.08.2017 at 08.00 a.m. On examination, he confirmed the death of the deceased and issued Ex.P.9. As per the request made by RDO P.W.16 under Ex.P.10, PW.14 and the other doctor conducted autopsy over the dead body and found rigor mortis in the dead body. He found the following external injuries on the dead body:

> '1)A transverse ligature mark prominent 1 CM Breath.
> a) about 10 CM length from middle to right side of neck. b) 8 CM length from middle 1 cm from left side of neck skin erythema.
> 2)Bluish discolouration of both hand upto metacarpophalangeal joint.
> 3)Multiple linear abrasion mark with erythema over back upto lower rib cage.

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4)A small abrasion over lower lip present.'

After conducting internal examination, he finally issued postmortem certificate Ex.P.11 and opined that the deceased appears to have died of asphyxia due to violent compression of neck by ligature strangulation.

2.6.In the meanwhile, P.W.8 VAO, while he was in the office on 21.08.2017 at about 02.00 p.m., A-1 appeared before him and gave an extra judicial confession, admitting the crime. P.W.8 had recorded the confession of A-1 in Ex.P.3 and gave a special report Ex.P.4 and handed over A-1 to the investigating officer P.W.19. P.W.19 arrested A-1 and altered the crime to sections 120B and 302 IPC under Ex.P.19, alteration report. Thereafter, he recorded the confession of A-1 in the presence of P.W.8 and other witness. The admitted portion of the confession of A-1 is Ex.P.5. Pursuant to the confession, the investigating officer seized the iron box M.O.1 from one white bag M.O.2 under Ex.P.6 mahazar and thereafter, forwarded A-1 to the court. The investigating officer, later, examined all the witnesses and obtained postmortem certificate and also examined forensic science officials. P.W.19 deposed that from the investigation, as it is found that the death was not due to dowry harassment, he handed over the case file to P.W.20 Inspector of Police

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for further investigation. P.W.20 examined the witnesses who were examined by P.W.19 and as the witnesses gave similar statements as the one given to P.W.19, he did not record their statements separately. After obtaining the viscera report Ex.P.20, he obtained the final report from the Doctor P.W.14. On 20.10.2017, he arrested A-2 near the bus stop and recorded her confession, forwarded the accused to the Court and finally, after examining all other witnesses, laid the final report against the accused under sections 120B, 302, 498A and 203 IPC.

3.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.2 of 2018 and was made over to the Sessions Judge (Fast Track Mahila Court), Erode for trial.

Charges against the accused :

4.The trial Court framed the following charges against the accused:

Accused	***Charges***
A1	Sections 498A, 120B, 302 and 203 IPC
A2	Sections 120B, 302 r/w 120B and 203 IPC

5.To prove the case, the prosecution has examined as many as 20

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witnesses, namely P.W.1 to P.W.20 and marked 21 documents, namely Ex.P.1 to Ex.P.21 and produced 6 material objections, namely M.O.1 to M.O.6.

6.On completion of the evidence on the side of the prosecution, the accused were questioned under section 313 Cr.P.C. as to the incriminating circumstances found against them in the evidence adduced by the prosecution witnesses. They denied all the incriminating circumstances as false. On the side of the defence, no evidence was recorded and no documents were marked.

7.The trial Court, after appreciating the oral and documentary evidence and materials on record, by judgment dated 25.09.2018 acquitted both the accused from the charges levelled against them.

8.Challenging the acquittal order, Crl.A.No.200 of 2019 has been filed by the defacto complainant and Crl.A.No.442 of 2021 has been filed by the State seeking to convict the accused.

Submissions on the side of Appellants :

9.The learned senior counsel appearing for the appellant in

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Crl.A.No.200 of 2019 and learned Additional Public Prosecutor for the appellant State in Crl.A.No.442 of 2021 made elaborate arguments against the acquittal of the accused by the trial court. They submit that the trial court has not appreciated the entire evidence properly. The medical officer's evidence clearly shows that the death of the deceased is not due to hanging, whereas the medical officer in his evidence clearly stated that the death of the deceased is only due to strangulation by the iron box cable. The entire evidence of the medical officer clearly indicates that there are ligature marks in the neck. There are transverse ligature marks, one in the neck measuring about 10cm from middle and extending right side and second ligature mark measuring 8 cm extending left side and there was contusion in the neck portion of the skin and bluish discolouration on both hands upto metacarpophalangeal joint. There are multiple linear abrasion mark with erythema over back upto lower rib cage and there is a small abrasion over lower lip. Further, the learned counsel also submits that the above injuries noted by the medical officer clearly shows that there are strangulation marks and abrasion marks and it is clearly proved that it is a case of homicidal violence. The learned counsel would submit that there is no saliva discharge from the

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mouth and the tongue was not protruding and therefore, it is not a case of hanging as stated by the accused and that the prosecution has proved the homicidal violence.

10.Both learned counsel would submit that admittedly, on the date of occurrence, only the accused and deceased were together in the house. Therefore, it is for the accused to explain as to what has transpired inside the house and that is the fact which is clearly within the knowledge of the accused and the same has not been properly explained. Except stating that the deceased had some connection with P.W.9, no other explanation was forthcoming from the accused. It is further submitted that though the theory of alleged dowry harassment and cruelty has not been established, even during the RDO enquiry, namely P.W.16, the fact of homicidal violence has been clearly established. Therefore, it has to be held that only the accused who has strangulated the deceased with M.O.1, Iron box cable. The trial court has not appreciated the evidence and the facts in this regard properly and had extended the benefit of doubt to the accused. But it is a clear case of homicidal violence and therefore, the

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accused are certainly liable to be punished.

11.In support of the above submissions, the learned senior counsel for the appellant defacto complainant has relied on the following case laws:

(a)Trimukh Maroti Kirkan Vs. State of Maharashtra [(2007) 1 SCC (Cri) 80]; and

(b)Javed Abdul Rajjaq Shaikh Vs. State of Maharashtra [(2020) 1 SCC (Cri) 101].

12.***Trimukh Maroti Kirkan*** case has been relied on to say that when the husband and the wife were last seen together and the occurrence has happened in the house where the husband was residing, it has been held that if the accused does not offer any explanation as to how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for the commission of the offence. ***Javed Abdul Rajjaq Shaikh*** case has been relied on by the learned senior counsel to distinguish as to what is throttling, strangulation and hanging and to say that the case on hand is a case of strangulation by the iron box cable.

Submissions made on the side of the respondents / accused:

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13.On the contrary, the learned counsel for the respondents/accused would submit that the entire complaint given by P.W.1 is false and it has been given after due deliberation with the entire family members of P.W.1, the mother of the deceased. It is the specific case of the accused in section 313 Cr.P.C. questioning that he had already suffered fracture in his right hand and on the date of the occurrence, the accused questioned the deceased as she was continuously talking in cell phone to some third party. The accused had suspected and scolded her. Annoyed over the same, the deceased agitated with the accused, went inside the room and the accused took the child and came out. After some time, on hearing some sound from the house, he went inside along with A-2 and found the deceased hanging in the ceiling fan using a rope. Immediately, with the help of A-2, namely his mother and other neighbours, who came to the spot, the body of the deceased was brought down. Immediately the accused took the deceased to two hospitals and she was declared dead.

14.The learned counsel for the respondents/accused would further contend that the evidence of P.Ws.6 and 7 clearly shows that the two accused were taken to the police station on the same day of the

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occurrence and therefore, they were kept in the custody. Therefore, the contention of the prosecution that A-1 appeared before the Village Administrative Officer P.W.8 and has given extra judicial confession on 21.08.2017 is highly doubtful, the same has been created only for the purpose of the case. It is the further contention that the nature of the injury noted by the medical officer and the the photographs filed as M.O.3 [series] clearly shows the injury on both sides of the neck and if really there is a manual strangulation as suggested by the prosecution, the injury should have been around the neck which is totally absent in this case. It is the further contention that though some abrasions on the neck were found, such abrasions are possible while bringing the deceased down while she was hanging. Therefore, that by itself cannot be a ground to presume that this is a homicidal violence. Further, the conduct of the accused is not unnatural and as a normal husband, he rushed the deceased to the hospital and not only one hospital but he took the deceased to two hospitals where the doctor declared her dead. Therefore, it is the contention of the counsel for the accused that the theory of the prosecution that it is a homicidal violence is highly improbable.

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15.Further, it is the contention that admittedly A-1 was suffering fracture on his right hand. This has been clearly admitted by P.W.1 herself. Just a few days prior to the date of occurrence, A-1 met with an accident on 24.07.2017 in Bengaluru, he was treated in Ganga hospital, Coimbatore and as his right hand got fractured, a bandage was applied. Therefore, when a person who has already suffered a fracture in one of the hands, using M.O.1, iron box cable and strangulating the deceased is highly improbable. If as per the version of the prosecution, M.O.1, iron box cable has been used, there must have been some injuries around the neck and further the iron box would have certainly caused certain injuries on the body of the deceased which is totally absent. Therefore, the theory of the prosecution is highly improbable. The opinion of the medical officer is based on the request made by the Investigating Officer. Therefore, there is no ground to hold that the prosecution has established the homicidal violence.

16.The learned counsel has further contended that the theory of defence that the deceased has developed some contact with a third party, namely, P.W.9 and he used to speak regularly with the deceased which was objected by A-1 which resulted in deceased taking the extreme step

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is not ruled out. The prosecution has very conveniently omitted to file the call details between P.W.9 and the deceased which has been clearly admitted by the investigating officer. Therefore, it is the contention of the respondent/accused that when the accused has given a clear explanation which is also clearly probable and that the prosecution case is merely on the basis of the medical evidence which is also not conclusive, it cannot be said that the prosecution has established the homicidal violence. The accused have been dragged unnecessarily by the family members of the deceased and after the death of the deceased, the FIR has been filed after due deliberation and discussion which suffers from spontaneity. Further, the theory of the prosecution about the dowry harassment is also found to be false. Hence, it is submitted that the prosecution has miserably failed to establish the guilt of the accused. The trial court has rightly appreciated the entire evidence and acquitted the accused and therefore, the learned counsel for the accused prays for dismissal of both the criminal appeals.

17.In support of his submissions, the learned counsel has relied on the following case laws:

(i)Ramachandran Vs. State [(2009) 1 MLJ (Crl) 620];

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(ii)Subramaniam Vs. State of Tamil Nadu [(2009) 14 SCC 415];

(iii)Duraisamy Vs. Gunasekaran [2010-1-LW(Crl) 1094];

(iv)Sanjay Dwarka Rai Vs. State of M.P. [MANU/MP/0206/1997];

(v)Chinna @ Chinnasamy Vs. State [2017 (2) MWN (Cr.) 261 (DB)];

(vi)Kagen Bera and another Vs. State of W.B [AIR 1994 Supreme Court 1511]; and

(vii)Chandrappa Vs. State of Karnataka [(2007) 4 SCC 415].

18.***Ramachandran*** case has been cited by the learned counsel for respondents 2 and 3/accused to say that as to how the ligature marks are caused either in the case of hanging or in the case of strangulation and by relying this case, learned senior counsel for the accused submitted that this is a case of hanging. ***Subramaniam*** case has been relied on to contend that the conduct of the accused should be considered and the injuries sustained by the deceased also did not suggest that the death

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could have been caused due to strangulation and also to say that since both the accused and the deceased were in the same place at the time of occurrence, it cannot be said that the accused had committed the offence.

19.The learned senior counsel has also relied on an order made by learned Single Judge of this court in ***Duraisamy*** case for the proposition that where the case rests mainly on medical opinion, it is the duty of the court before relying on such medical evidence to make it sure that no other contrary opinion is possible. The learned counsel also relied on ***Sanjay Dwarka Rai*** case, which is a judgment of Hon'ble Division Bench of Madhya Pradesh High Court [Jabalpur Bench], wherein it has been held that mere suspicion however strong could not form the basis of conviction and when two views are possible, the view which is favourable to the accused should be adopted.

20.A judgment of Hon'ble Division Bench of Madras High Court in ***Chinna @ Chinnasamy*** case was relied on to say that the extra judicial confession when shrouded with doubts cannot be sole basis for conviction and the conduct of the accused not absconding from the place of occurrence can be considered. ***Kagen Bera*** case was relied on regarding the conduct of the accused. The learned senior counsel for the

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respondents / accused has also relied on the case of Hon'ble Supreme Court in ***Chandrappa*** for the purpose that where two views are possible on evidence on record, the one taken by the trial court in favour of the accused should not be disturbed by appellate court.

Discussion and findings :

21.We have perused the entire materials and has paid anxious consideration to the submissions made by learned counsel on both sides.

22.It is not in dispute that the deceased and A-1 were married on 07.06.2015. Previously they were residing in a joint family and thereafter, they have set up a separate house. They were blessed with a female child. Though P.W.1 in her evidence has stated that at the inception, there was a demand of dowry and the A-1 used to come in a drunken mood and beat the deceased, the entire evidence with regard to dowry demand was found to be false. Even during the inquest by P.W.16, Revenue Divisional Officer, he has clearly recorded that there was no dowry demand and the death of the deceased was not due to cruelty in connection with the dowry. Further, the entire evidence of P.Ws.1, 2 and 3 when carefully perused, it is clear that the deceased left her jewels in her parents house and it was objected by the accused. Thereafter, the

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jewels were handed over to the accused. Except this, no other aspect has been established. The entire narration made by P.W.1 in her evidence is a clear improvement to Ex.P.1 complaint given at the earlier point of time to say that there was a demand of dowry and cruelty in regard to the same, but the narration of dowry demand and cruelty aspects have been later developed. Be that as it may.

23.It is the case of P.W.1 that on 17.08.2017, she has spoken to her daughter and her daughter told her that the A-1 was ill treating her at the instance of A-2. However, P.W.1 had pacified her daughter and on the next day, when she called the deceased, she did not pick the phone and thereafter, at 10.30 p.m., P.W.2 informed P.W.1 that A-1 told P.W.2 that the deceased Manjula committed suicide and the deceased was taken to the Abi S.K. hospital. Thereafter, they rushed to the house of the deceased and at that time, the dead body was in the house. On seeing the injury on the neck, there arose some suspicion. After all the relatives came, they had a discussion and gave Ex.P.1 complaint to the police.

24.The entire evidence of P.W.1 when carefully perused, it is seen that P.W.1 has projected as if there was a dowry demand from the

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accused and the same has been negatived by P.W.16 during his enquiry and the accused has not faced any trial with regard to the dowry demand and the cruelty with regard to the same. The specific charge against the accused was under sections 120B and 302 IPC and also under sections 203 and 498A IPC. Therefore, it is clear that the charge against the accused for dowry demand has not been established by the prosecution. Be that as it may. The evidence of P.W.1 when carefully looked into, it is clearly indicated that they suspected some foul play and gave a complaint on the next day. P.W.2 also in his evidence has clearly stated that A-1 had only informed him that her sister, namely, deceased committed suicide and therefore, A-1 took her to the Abi S.K.hospital and after the death was confirmed in the hospital, the body was brought to the house. The evidence of P.W.1 when further carefully perused would indicate that A-1 in fact has met with an accident on 24.07.2017 and his right hand got fractured and he was taking treatment in Ganga hospital at Coimbatore. The evidence of P.W.1 in her cross examination indicates that A-1 met with an accident on 24.07.2017 and he was treated for fracture and had been placed bandage using plaster cast on his right hand in the Ganga Hospital, Coimbatore. It was further asserted in her cross

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examination as follows:

'03.07.2017க்குப் பிறகு எனது மகள் இறக்கும் வரை நான் என் மருமகன் வீட்டிற்கு போகவில்லை என்றால் எனது மருமகனுக்கு கை உடைந்தபோது பார்க்கப்போனேன்.'

The above evidence makes it clear that A-1 has got a fracture on his right hand just 25 days prior to the alleged occurrence.

25.It is the evidence of P.W.6 that on 18.08.2017, on getting the phone call from A-1, he rushed to the spot immediately and took the deceased to the hospital along with A-1. His evidence clearly shows that immediately, they rushed the deceased to the S.K. Hospital and the deceased was examined in the car itself and was declared dead and therefore, they took the deceased to M.R.S hospital and as it was informed that the deceased died, the body was brought to the house. His evidence also clearly shows that A-1 has fractured his right hand and had bandage in his hand. His further evidence would indicate that during night on the same day at 1.30 a.m., the police came there, took the body of deceased to the hospital and also took custody of A-1 and A-2 on the

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same day and they were taken to the police station.

26.P.W.7, who is a close relative of the deceased, in his evidence during cross examination has stated that the A-1 and deceased were affectionate and his evidence also clearly shows that on the date of occurrence, A-1 and A-2 were taken to the police station on the same day. P.W.7 in fact is the relative of the deceased and there was no need for him to give a false evidence about the police taking A-1 and A-2 to the custody on the same day. His evidence clearly support the version of P.W.6. Therefore, the prosecution theory that A-1 appeared before the VAO P.W.8 at 02.00 p.m. on 21.08.2017 and gave the extra judicial confession Ex.P.3 narrating the alleged incident is highly doubtful. When the close relative of the deceased and the person who has rushed to the spot immediately on the occurrence day have clearly stated that on the same day, i.e., on 18.08.2017 itself A-1 and A-2 were taken to police custody, therefore, the theory of the prosecution that A-1 appeared before the P.W.8 VAO and gave the extra judicial confession is highly doubtful. We are unable to believe the story of the prosecution with regard to the extra judicial confession.

27.The fact that the A-1 taking the deceased to the hospital

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immediately on the same day when she died was also spoken to by P.W.11 medical officer attached to Abi S.K. Hospital. The prosecution has examined P.W.13, the Assistant Director working in the Forensic Science department. According to her on 19.08.2017, she visited the place of occurrence and also inspected the fan which was used for hanging. According to her, there was no damage to the ceiling fan and the dust was very much available in the fan; the cup and doom of the fan were also found with dust and there was no indication that the fan is being used for committing suicide. She has also issued certificate Ex.P.8 in this regard. It is relevant to note that Ex.P.8 though is stated to have been given by P.W.13 on 20.08.2017, when it is seen carefully, it comes to light that it has been despatched to Court only on 23.10.2017 and further it reached the court on 05.12.2017 with an inordinate delay. This fact also creates some doubt in preparing Ex.P.8. Further, when the evidence of P.W.13 is analysed carefully, it is seen that as to how P.W.13 could identify the fan which was used for hanging, is not clearly stated and she feign ignorance with regard to the same. She has further stated in her cross examination that the fan was in the height of 6 feet and it was also admitted that a person who is 5-1/2 feet height can easily reach the

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fan which is above 6 feet, Further, she has also stated that she did not know as to whether the fan is in working condition or not. The evidence of P.W.13 appears to be very artificial in nature. In her cross examination, P.W.13 has stated that the fan is situated in the height of 6 feet from the bottom, whereas from the observation mahazar Ex.P.2 prepared by the investigating officer, it is seen that the fan was situated in a reaper which is situated 14 feet height from the ground and the fan is situated in the height of 8 feet from the ground. This fact creates a serious doubt about the veracity of Ex.P.2 observation mahazar and this has been relied on by the prosecution to show that the deceased could not have reached the ceiling fan to commit suicide but the evidence of P.W.13 and Ex.P.2 observation mahazar speak contrary to each other. According to P.W.13, the fan is found at the height of 6 feet, whereas in the observation mahazar, it is shown that it is situated at the height of 8 feet.

28.It is also the case of the prosecution that the door was not locked from inside but in this regard, the evidence of P.W.5, VAO, who is the witness for observation mahazar and rough sketch, clearly shows that if the the door in that room is not locked, one could go inside if one

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pushed the door. This fact also creates some doubt about the very nature of the prosecution. It is the specific case of the prosecution that M.O.1 iron box with cable has been used to strangulate the deceased. This court has carefully examined M.O.1 and it is seen that the iron box is attached with cable on one hand and at the other end of the cable with three pin plug. If really the iron box with cable has been used, there must be at least injury around the neck which is found missing, whereas contusion is found only on the right and left side of the neck and no injury whatsoever is found around the neck and back of the neck. Admittedly, it is the case of the prosecution that the iron box with cable and three pin plug has been used for strangulation. In such a case, either the iron box or the three pin plug in the iron box should have caused some injury if it had some contact with the neck but no such injury whatsoever was found by the medical officer.

29.Further, it is the specific case of the prosecution that only A-1 had strangulated while the deceased was sleeping, but admittedly, the right hand of A-1 had got fractured and he had bandage of plaster cast on his right hand and therefore, the prosecution theory that A-1 has used the iron box cable for strangulating the deceased is highly improbable and

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creates a serious doubt. Further, the doctor has also opined as if the cable in the iron box contained some dirt of the neck. In such a case, at least the iron box should have been subjected to forensic examination to find out if any skin part of the deceased is found in the iron box cable but the prosecution has not made out any attempt to conduct such forensic examination to unearth the truth with regard to the alleged incident. If it is a case of strangulation, the ligature mark would be horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish. Admittedly, no injury whatsoever is noted by the medical officer round the neck, whereas ligature mark found by the medical officer is extended from centre to right neck and between chin and larynx. No doubt, a abrasion on the back of the body was found. We are of the view that merely because there is abrasion on the back of the body, we cannot come to a conclusion that it is a clear case of strangulation. Such abrasion could also be possible while the deceased's body was brought down and kept on the floor and the deceased was also taken to not only one hospital but two hospitals immediately. Therefore, the possibility of getting such abrasion also cannot be ruled out. No doubt, saliva has not

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come out from the mouth and no saliva whatsoever was found near the neck. The explanation of the accused clearly indicates that annoyed over the questioning of the A-1 to the deceased about the frequent calls to a third party, she went inside the house and A-1 was with the child outside of the house. After hearing sound from inside home, A-1 immediately rushed to the spot and raised voice. A-2 and neighbours came and brought down the deceased. There is absolutely no evidence with regard to the aspect that if within such a short span of time, whether saliva will come out or not. The evidence of the medical officer has not explained this aspect. Therefore, we are of the view that the prosecution has not established the clear case of strangulation. Though the post mortem doctor has not explained anything in his post mortem report, he has given an opinion only based on the report from the chemical examiner. The medical officer has opened that the deceased would appear to have died of asphyxia due to violent compression of neck by ligature strangulation. In his post mortem certificate, he was not in a position to give the opinion and the report from the forensic science department came only on 06.10.2017 and based on that, he has given the opinion. Be that as it may.

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30.Admittedly, A-1 has got fracture on his right hand and if strangulation has happened using the iron box with cable and when at the other end of the cable, the three pin plug is available, then there must be at least some injuries around the neck which is totally absent. Therefore, we are unable to accept the prosecution case of homicidal violence which creates a serious doubt. Though the evidence of post mortem doctor indicates and gives a view as if there is homicidal violence, the other view that the strangulation would not have been caused, as discussed above, is also available. Therefore, when there are two views possible, the one view which is in favour of the accused has to be accepted. This is the fundamental of criminal jurisprudence. No doubt, when any such occurrence has happened and when it has happened inside the house where the husband and wife alone are available, it is for the accused to explain what has transpired inside between them on the particular date and time. It is for the accused to explain what has transpired on the date of the occurrence. In the absence of any explanation by the accused to explain any fact which is especially within the knowledge of the accused, it also gives additional link against him but at the same time, to apply that presumption as against the accused, the prosecution must have

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proved clinchingly the foundational facts and the same should have been clearly established by the prosecution that it is only the homicidal death. Therefore, the accused cannot be directed to discharge the initial burden under section 106 of the Evidence Act, 1872 in a given case. Further, the accused has also clearly explained the circumstances under which the deceased committed suicide.

31.In the written statement filed under section 313 Cr.P.C., it has been clearly stated that the deceased used to speak to P.W.9 Dinesh and he has also sent messages, for which A-1 has warned the deceased many times. Despite the same, she continued to speak to P.W.9. On 18.08.2017 also, she was speaking with P.W.9 in the cell phone. When questioned by the A-1, the deceased did not answer properly. Therefore, the A-1 scolded her. Annoyed by the same, she went inside the room. Thereafter, A-1 took the child and went out. On hearing the sound from inside, A-1 rushed to the spot and found that the deceased was hanging with rope. A-2 and others rushed to the spot and they brought the deceased down and kept the body on the floor. Immediately, they all took the deceased to hospital. When the above statement is carefully considered with the evidence of P.W.9 and the investigating officer, the explanation of the

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accused is more plausible. P.W.9 Dinesh was examined. His evidence clearly indicates that the deceased and P.W.9 were schoolmates and they studied upto 10th standard together and on 31.07.2017, he has also sent whatsapp to deceased 'Hai, how are you'. Though after marriage, he did not maintain relationship, the deceased again met him with regard to loan transaction. His cross examination clearly indicates that he has spoken to the deceased and he is also aware of the number of the deceased. He has also admitted that the details with regard to the call summary was taken by the police. P.W.19 has admitted that he obtained call details of P.W.9 and deceased but having been obtained the call details, he has not filed the same before the court for the reasons best known to him. When P.W.9 himself indicates that there was some message sent by him in whatsapp and when the explanation offered by the accused is also probable, coupled with the fact that the call details have been suppressed and has not been filed before the court, as discussed above, this court is of the considered view that A-1 strangulated the deceased by using M.O.1 is highly improbable. Further despite the opinion of the doctor that he has found some dirt on the M.O.1 iron box cable, for the reasons best known to the investigating officer, the same was not subjected to

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forensic examination to find out if any body parts or tissues of deceased are found in the M.O.1. Therefore, this also causes some doubt on the prosecution case. The conduct of A-1 appears to be normal and he only informed P.W.2 at the first instance about the occurrence and immediately, rushed the deceased to the hospital. This conduct does not indicate any attempt by the A-1 to abscond or to hide the evidence. Therefore, the conduct of the A-1 was normal and shows his bona fide conduct.

32.It is relevant to refer to a decision of Hon'ble Supreme Court in ***Shambu Nath Mehra v. State of Ajmer*** reported in ***(1956) 1 SCC 337*** with regard to the burden of proof in the light of Section 106 of the Evidence Act, 1872 and the relevant paragraphs in this regard are paragraphs 11 and 13 which read as follows:

> '**11.** This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or

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inconvenience. The word "especially" stresses that. It means facts that are *pre-eminently* or *exceptionally* within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are *Attygalle* v. *R.* [*Attygalle* v. *R.*, 1936 SCC OnLine PC 20 : AIR 1936 PC 169] and *Seneviratne* v. *R.* [*Seneviratne* v. *R.*, 1936 SCC OnLine PC 57 : (1936) 44 LW 661]

13. We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all

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matters that must be taken into consideration. The section cannot be used to undermine the well-established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts. '

(*Emphasis supplied*)

33.In ***State of Madhya Pradesh v. Balveer Singh*** reported in ***2025 LiveLaw (SC) 243***, the Hon'ble Supreme Court has held as follows :

"75.Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

76.Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a

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crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

77.Section 106 obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:

"All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take

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into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence."

(Emphasis supplied)

78.To recapitulate the foregoing : What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams—Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion—para 527 negative averments and para 528 — "require

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affirmative counter-evidence" at page 438 and foil, of Kenny's outlines of Criminal Law, 17th Edn. 1958."

34.In ***Pradeep Kumar Vs. State of Chhattisgarh*** reported in ***(2023) 5 SCC 350***, the Hon'ble Supreme Court has held that where heavy reliance is placed on circumstantial evidence, when two views are possible, one pointing to the guilt of the accused and the other towards his innocence, the one which is favourable to the accused must be adopted. Paragraph 27 of the above decision in this regard is as follows:

> **'27.** It is important to note that the cardinal principles in the administration of criminal justice in cases where heavy reliance is placed on circumstantial evidence, is that where two views are possible, one pointing to the guilt of the accused and the other towards his innocence, the one which is favourable to the accused must be adopted. [*Kali Ram* v. *State of H.P.* [*Kali Ram* v. *State of H.P.*, (1973) 2 SCC 808 : 1973 SCC (Cri) 1048]] '

35.Therefore, this court is of the considered view that the prosecution has not proved its case of homicidal violence beyond reasonable doubt. The evidence with regard to the extra judicial confession of A-1 given before P.W.8 is not believable in the light of the

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evidence of P.Ws.6 and 7. They have stated in their evidence that the police came to the house of A-1 on the date of occurrence and has taken custody of both A-1 and A-2. When that being the case, the extra judicial confession of A-1 is improbable and is highly doubtful. There are contradictions in the evidence of P.W.13 and in Ex.P.2 observation mahazar with regard to the height in which the fan is fixed and therefore, the veracity of Ex.P.2 is doubtful. Besides, the case of the prosecution that A-1 has strangulated the deceased is also highly improbable because of the fact that A-1 suffered a fracture on his right hand few days prior the the date of occurrence and had a bandage in his right hand. The fact that A-1 had a bandage on his right hand on the date of occurrence was spoken to by the evidence of P.W.6 in the cross examination and therefore, the theory of the prosecution relating to the strangulation of deceased by A-1 is improbable. As per the prosecution, the iron box with cable was used for strangulation and dirt of the skin was also found in the iron box cable. If that is so, the iron box with cable should have been subjected to scientific examination to find out the truth. But for the reasons best known to him, the investigating officer has failed to do so. The explanation offered by A-1 in section 313 Cr.P.C. questioning is

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found probable when it is considered with other materials on record and it is consistent with normal human conduct. It is coupled with the other conduct of A-1 who has immediately informed about the commission of suicide by the deceased to the relatives of the deceased and taking the deceased to two hospitals, shows the natural behaviour of A-1 and it also shows that he has not made any attempt to conceal the offence. So, this conduct of the accused must also be weighed in favour of the accused.

36.In view of the above discussions and the case laws, this court is of the considered view that when there are two views available, i.e., one for strangulation and the other one for hanging, the view in favour of the accused should be accepted and the accused has to be necessarily given the benefit of doubt.

37.In the light of the above, this court does not find any merit in the contentions of the appellant in both the criminal appeals and both criminal appeals are liable to be dismissed. The judgment of conviction and sentence imposed by the trial court dated 25.09.2018 made in S.C.No.2 of 2018 is confirmed. Both the criminal appeals are dismissed. There shall be no order as to costs.

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

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31.10.2025

Index : Yes
Speaking Order
Neutral Citation : Yes
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To

1.The Sessions Judge,
(Fast Track Mahila Court),
Erode

2.Inspector of Police,
Kadathur Police Station,
Erode District

3.The Public Prosecutor,
Madras High Court,
Chennai.

N.SATHISH KUMAR, J.
and
M.JOTHIRAMAN, J.

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Criminal Appeal Nos.200 of 2019
and 442 of 2021

31.10.2025

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