



CRL.A(MD).No.779 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.04.2026

CORAM :

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

CRL.A(MD).No.779 of 2023
and
CRL MP(MD).No.15194 of 2023

D.Duraiyaran

... Appellant

Vs.

The State rep by its,
The Inspector of Police,
Srivilliputhur Town Police Station,
Srivilliputhur, Virudhunagar District.
(Crime No.101 of 2014)

... Respondent

PRAYER : Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the judgment dated 26.07.2023 made in S.C.No.61 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Srivilliputhur and allow the criminal appeal.



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For Appellant : Mr.C.Christopher for
Mr.A.Padmanaban

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was made by **K.K.RAMAKRISHNAN,J.**)

The sole accused in S.C.No.61 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Srivilliputhur has preferred the present appeal challenging the conviction and sentence imposed upon him under Section 450 of IPC sentencing him to undergo 10 years Rigorous Imprisonment and to pay fine of Rs.2000/- in default, to undergo 3 months Rigorous imprisonment and convicting him under Section 302(2 counts) of IPC and sentencing him to undergo life imprisonment and fine of Rs.5,000/- in default, to undergo 6 months Rigorous imprisonment (2 counts) and convicting him under Sections 404 of IPC and sentencing him to undergo 3 months Rigorous imprisonment and to pay fine of Rs.1000/- in default to undergo 3 months Rigorous imprisonment and convicting him under Section 380 of IPC and sentencing him to undergo 7 years Rigorous imprisonment and to pay fine of Rs.3000/- in default, to undergo three



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months Rigorous imprisonment and directing the sentences to concurrently,
as per the judgment dated 26.07.2023.

2.Brief facts of the case:

According to the prosecution, the deceased, namely Saroja (D1), was a retired Office Assistant in the Panchayat Union, and her husband Solaimalai (D2) was employed as a teacher in a private Higher Secondary School at Srivilliputhur. The couple resided at Soundiamman Koil Street, Srivilliputhur and had no children. PW1, the sister of D1, and PW4, her husband, were residing separately. On 17.02.2014 at about 9:30 a.m., PW1 tried to contact the deceased over phone, but there was no response. Suspecting something foul, PW1, along with PW4 and other relatives, went to the house of the deceased at about 5:15 p.m. On entering the house, they were shocked to see both D1 and D2 lying dead with severe head injuries. PW1 lodged a complaint before the respondent police, upon which a case in Crime No.101 of 2014 was registered under Sections 450 and 302 of the Indian Penal Code. The First Information Report was marked as Ex.P14. PW20, the Inspector of Police, took up the investigation, visited the scene



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of occurrence, and prepared the Observation Mahazar and Rough Sketch (Exhibits.P8 and P15) in the presence of witnesses. He also seized material objects including bloodstained earth and a grinder stone alleged to have been used for the commission of the offence.

2.1.Inquest was conducted over the bodies of both deceased (Exs.P16 and P17), and the bodies were sent for postmortem. PW14, the Doctor, conducted autopsy on 18.02.2014 and opined that the deaths were due to head injuries sustained, and that the time of death was approximately 32 to 46 hours prior to postmortem.

2.2.On 24.02.2014, the accused allegedly appeared before the Village Administrative Officer (VAO) and gave an extra-judicial confession, which was recorded as Ex.P15. In the said confession, the accused is stated to have admitted that he committed the murder due to a monetary dispute, as the D1 had failed to give him money. He further stated that when D2 intervened, he assaulted him also with a grinder stone and he had stolen and sold of gold jewels belonged to the deceased.



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2.3.Pursuant to the said confession, recoveries were effected under Section 27 of the Indian Evidence Act, including bloodstained clothes (MOs 13 and 14).

2.4.Based on his disclosure, part of the jewels were traced through one Sheikh Alavuddin and subsequently in a jewellery shop, where they had been melted into gold bars. Some more jewels (MOs 2 to 11) were recovered from a scrap shop identified by the accused. Investigating agency examined material witnesses and collected FSL report and after completing investigation, final report was filed before the jurisdictional Magistrate, namely the Judicial Magistrate No.II, Srivilliputhur, and the same was taken on file in P.R.C.No.38 of 2014. Thereafter, the case was committed to the Mahila Special Court, Srivilliputhur, and was taken on file as S.C. No.61 of 2015.

2.5.The accused was summoned and, upon appearance when he was questioned, he pleaded not guilty and claimed to be tried. The learned trial Judge framed the necessary charges under Sections 450, 302 (two



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counts), 404, and 380 IPC against the appellant. The accused denied the charges and claimed to be tried. In order to prove its case, the prosecution examined PWs 1 to 20, marked Exs. P1 to P23, and produced MOs 1 to 20. Thereafter, the learned trial Judge examined the accused under Section 313 of Cr.P.C asking him about the incriminating circumstances appearing in the evidence on record. The accused denied the same as false. On the side of the defence, RW1 and RW2 were examined.

2.6. The learned trial Judge, after considering the entire evidence and materials on record, found the accused guilty of the offences charged, and sentenced him as stated above, by judgment dated 26.07.2023. Challenging the same, the present appeal has been filed by the accused/appellant.

3. Submissions of the learned counsel appearing for the appellant:

The learned Counsel for the appellant would submit that this is a case based entirely on circumstantial evidence. He would further contend



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that the principles laid down by the Hon'ble Supreme Court for appreciating circumstantial evidence have not been followed by the trial court, and the prosecution has failed to prove the case beyond reasonable doubt.

3.1. According to the learned counsel for appellant, in a case of circumstantial evidence, the prosecution must establish a complete chain of circumstances, each of which must be proved beyond reasonable doubt, and the circumstances must be consistent with the hypothesis of guilt of accused, that is to say, they should not be explained on any other hypothesis except that the accused is guilty. In the present case, none of these principles have been properly considered by the learned trial Judge.

3.2. The learned trial Judge relied upon the evidence of PW9, who stated that D2 had informed him on 16.02.2014 about the visit of the accused to their house and that the accused had demanded money and property from them since they had no children. However, apart from this statement, there is no other evidence available on record to show that the accused was present in the house at the time of occurrence or was seen in



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the company of the deceased at any point of time prior to their death.

Therefore, the “last seen” theory has not been established. The evidence of PW9 is purely hearsay and cannot be relied upon.

3.3.The learned trial Judge also relied upon the extra-judicial confession said to have been given by the accused before the Village Administrative Officer. It is highly improbable that the accused, who hails from Tiruvarur District, would travel more than 300 kilometers and give a confession before an unknown Village Administrative Officer after several days from the date of occurrence. Hence, the extra-judicial confession is inherently improbable and unreliable. It is further submitted that extra-judicial confession is a weak piece of evidence, and in the absence of corroboration, the conviction cannot be sustained solely on that basis and placed reliance of the judgement of the Supreme Court in the case of ***Chandrapal vs State of Chhattisgarh*** reported in (2023) 16 SCC 655.

3.4.The learned counsel further submitted that there is no corroboration for the contents of the alleged extra-judicial confession, and



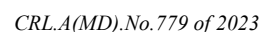
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therefore, the conviction based on such evidence is unsustainable.

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3.5. With regard to the recovery of jewels, the learned trial Judge failed to consider that the recovery has not been proved in accordance with law. There is no evidence available on record to show that the jewels belonged to the deceased or that the accused had committed theft of the same. The evidence of PW7, the Village Administrative Officer, and other witnesses (PWs 10, 11, 12, and 13) is not reliable to prove the source and manner of recovery. The recoveries appear to have been a made up story to falsely implicate the accused.

3.6. It is further submitted that the fingerprint expert's evidence is also unreliable. There is no material to show when and how the fingerprints of the accused were taken. No document has been produced to establish that the specimen fingerprints were obtained in accordance with law and forwarded for comparison. The fingerprint expert submitted his report on 17.02.2016, whereas the accused was arrested only on 24.02.2016. Even on the date of arrest, there is no evidence to show that his fingerprints were



3.7. It is also stated that four sets of fingerprints were marked, namely: one relating to D1, another to D2, one to a person by name, Arul Kumar, and one allegedly to the accused. However, in the absence of proper proof regarding the collection and comparison of fingerprints, the said evidence cannot be relied upon.

3.8. The learned counsel for the appellant would further submit that the alleged recovery of bloodstained clothes is doubtful. According to him, the bloodstained clothes were not recovered from the deceased, and the recovery mahazar does not disclose that the accused's clothes were recovered in the manner alleged by the prosecution. A perusal of Ex.P11 would show that the recovery was effected in the presence of police officials. Therefore, the claim of the prosecution that the recovery was made in the presence of the Village Administrative Officer is not believable. It is further contended that the prosecution has failed to prove its case beyond



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prosecution case.
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3.11. With regard to the recovery of jewels allegedly belonging to the deceased, it is submitted that the evidence of PWs 10, 11, 12, and 13 are unreliable and appears to be stage-managed. It is further contended that the recovery proceedings were fabricated even prior to the arrest of the accused. There are material contradictions between the evidence of PW15 (Village Administrative Officer) and the Investigating Officer. While the Investigating Officer stated that the confession was recorded at one place and recovery was effected at another place PW5, a material witness, deposed that the confession was recorded in a shop and the recovery was made pursuant thereto. These material contradictions strike at the root of the prosecution case and create serious doubt.

3.12. The learned counsel also pointed out that one of the fingerprints (marked as M3) was identified as belonging to one Arul Kumar. The prosecution has failed to explain the presence of this fingerprint at the scene of occurrence. No investigation has been conducted to trace or



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examine the said Arul Kumar. This lapse on the part of the prosecution suggests suppression of material facts and possible involvement of some other persons.

3.13. In view of these serious infirmities, it is submitted that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt, and therefore, the appellant is entitled to acquittal.

4. Submissions of the learned Additional Public Prosecutor:

Per contra, the learned Additional Public Prosecutor, upon perusal of the records and the impugned judgment, and with the assistance of the investigating officer present before the Court, would submit that this is a case of double murder, and the prosecution has established its case through cogent and convincing circumstantial evidence. It is contended that the evidence of P.W.6 and P.W.9 clearly establishes the involvement of the accused. The recovery of incriminating materials, including the jewels belonging to the deceased, has been duly proved. The minor contradictions pointed out by the defence do not go to the root of the matter and are not



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sufficient to discard the prosecution case.

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4.1.The learned Additional Public Prosecutor would further submit that the recovery of the stolen jewels, coupled with the failure of the accused to offer a plausible explanation under Section 313 of Cr.P.C., forms a strong incriminating circumstance against him. Taken cumulatively, these circumstances establish the guilt of the accused beyond reasonable doubt. Therefore, he seeks to dismiss this appeal.

5. This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

6.The question arises in this case are as follows:

i) Whether the prosecution proved the case beyond reasonable doubt against the appellant and consequently conviction and sentence passed against the appellant in S.C.No.61 of 2015 can be sustained?



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7. Discussion on the legal principles:

Before discussing this case on merits, this Court would like to extract the principle laid down by the Hon'ble Supreme Court on the nature and essential proof required in a criminal case which rests on circumstantial evidence.

7.1. The foundational decision of the Hon'ble Supreme Court in the case of the circumstantial evidence is *Hanumant v. State of Madhya Pradesh* [(1952) 2 SCC 71] and the relevant portion of the judgement is extracted hereunder:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other



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words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

7.2.Yet another judgement of the Hon'ble Constitution Bench of Supreme Court is In *M.G. Agarwal vs State of Maharashtra* [AIR 1963 SC 200] and the Hon'ble Constitution Bench held as follows:

If the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused, and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt.



7.3. The Hon'ble three judges Bench of the Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 153*** set out five golden principles, namely the panchsheel of the proof of a case based on circumstantial evidence and the same is as follows:

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

7.3.1. *It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in the case of **Shivaji Sahabrao Bobade v. State of Maharashtra** reported in (1973) 2 SCC 793, which reads as follows:*

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

7.3.2. *the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*

7.3.3. *the circumstances should be of a conclusive nature and tendency,*



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7.3.4. *they should exclude every possible hypothesis except the one to be proved, and*

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

7.4. In the case of ***Padala Veera Reddy v. State of A.P.*** reported in ***1989 Supp (2) SCC 706***, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- “(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 the 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.”*



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7.5. Hon'ble Supreme Court also reiterated the said principles in the case of ***C. Chenga Reddy v. State of A.P.*** reported in ***(1996) 10 SCC 193*** wherein it has been observed thus :

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

7.6. It is well settled principle that “fouler the crime higher the proof” and the suspicion, however great it may be, cannot take the place of legal proof and the Hon'ble Supreme Court has reiterated the said principle in the following cases:



7.6.1. In the case of ***Sujit Biswas v. State of Assam***, in (2014) 1

SCC (Cri) 677, the Hon'ble Supreme Court has held as follows:

13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is



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avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

7.7. In the case of circumstantial evidence, the judgment remains essentially inferential. The famous Author “Sri Alfred Wills, in his admirable book “Wills' Circumstantial evidence” laid rules to draw such legal inference which has been followed and observed as universal guide by various Courts all over world including our Apex Court in the case of ***Geejaganda Somaiah v. State of Karnataka***, reported in ***(2007) 9 SCC 315*** which reads as follows:

7.7.(A). The facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;

7.7.(B). The burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

7.7.(C). In all cases, whether of direct or circumstantial evidence the best evidence must be adduced



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which the nature of the case admits;

7.7.(D). In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and

7.7.(E). If there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

7.8. The Hon'ble Supreme Court in the case of ***Sujit Biswas v. State of Assam***, reported in ***2014 (1) SCC (Cri) 677*** has followed similar line of guidance in paragraph No.18 which reads as follows:

18..... In a case of circumstantial evidence, the judgment remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.



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7.9. This case rests entirely on circumstantial evidence. Therefore, from the above principles laid down by the Hon'ble Supreme Court, the following principles flows:

Firstly, the prosecution must prove each link in the chain of circumstances beyond reasonable doubt.

Secondly, all the circumstances so proved must form a complete chain, excluding every other possible hypothesis except that of the guilt of the accused.

Thirdly, the circumstances must be of a conclusive nature and tendency. It is also the duty of the Court to ensure that the facts so established are consistent only with the hypothesis of the guilt of the accused and not with any other hypothesis.

7.10. Keeping these settled principles in mind, this Court proceeds to examine the facts of the present case.

8.Discussion on the recovery:

According to the prosecution, based on the extra-judicial



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confession, the accused had stolen two gold chains belonging to deceased Nos. 1 and 2. To prove this allegation, the prosecution relied upon the arrest and recovery said to have been effected on 24.02.2014. It is alleged that, after the extra-judicial confession, the accused gave another confession to the Investigating Officer (PW20), and on the basis of the disclosure statement marked as Ex.P27, recovery was effected under Ex.P18.

8.1.The prosecution case is that there were two categories of jewellery. First, certain jewels were pledged with a shop owner. Secondly, according to the second confession of the accused, he had stolen several items of jewellery from the deceased. Among those items, he allegedly handed over two gold chains belonging to deceased No.1 to one Sheikh Allaudin, who has not been examined before this Court. It is further stated that the said Sheikh Allaudin, in turn, handed over the chains to another person, and ultimately the accused went to a shop where the chains were melted into gold ingots, which were later recovered. The remaining jewellery items, marked as M.O. Nos. 2 to 11, were also recovered based on the confession of the accused.



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8.2.However, there is a material contradiction between the evidence of the Investigating Officer and that of the recovery witness. The Investigating Officer deposed that the confession was recorded at the police station, whereas the Village Administrative Officer, who attested the recovery mahazar, specifically stated that the confession was recorded at the place of recovery, which is more than 300 kilometers away from the police station.

8.3.Further, one of the material circumstances relates to the alleged recovery of bangles belonging to the deceased. However, the photographs marked by the prosecution clearly show that the bangles were found on the body of D1. In such circumstances, the recovery appears to be doubtful. Therefore, it is contended that the entire recovery has been fabricated by the prosecution in order to support the extra-judicial confession.



9. Discussion on extra judicial confession:

The Hon'ble supreme Court in the following cases reiterated the principle that an extra-judicial confession is a weak piece of evidence and must be examined with great care and caution and It must be shown to have been made voluntarily, must be truthful, and must inspire confidence.

9.1. In the case of ***Chandrapal vs State of Chhattisgarh*** reported in (2023) 16 SCC 655. The Hon'ble Supreme Court held as follows:

"19. In Sahadevan vs State of T.N. it was observed in Para 14 as under:

"14. It is settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances,



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the Court would be fully justified in ruling such evidence out of consideration."

20. The said ratio was also reiterated and followed by this Court in Jagroop Singh vs State of Punjab, Sk.Yusuf vs State of W.B. And Pancho vs State of Haryana, wherein it has been specifically laid down that the extra-judicial confession is a weak evidence by itself and it has to be examined by the Court with greater care and caution. It should be truthful and should inspire confidence. An extra-judicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and is further corroborated by other prosecution evidence."

10. In this case, the accused came to P.W.15's office on 24.02.2016 at 09.00a.m. in the presence of his assistant namely Sivan and gave the voluntary extra-judicial confession admitting his guilt. The said Sivan was not examined to corroborate the above P.W.5 evidence. Accused in his 313 Cr.P.C. stated that on 22.02.2014, the police officials came to his native place at Thiruvavarur, and forcibly obtained his fingerprints by subjecting him to coercion, including physical force. He has also stated that



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the alleged confession was obtained under duress and that no recovery was effected in the manner alleged by the prosecution. It is well settled that the Court is duty-bound to consider the explanation offered by the accused under section 313 Cr.P.C. in the light of the evidence on record. However, this explanation offered by the accused has not been considered by the learned trial Judge in his discussion. There is no reference whatsoever to the said explanation in the judgment. D.W.1, Revenue Inspector, Srivilliputhur was examined and he was requested to produce the movement register of P.W.15. It is the case of the prosecution that P.W.15 after recording the extra-judicial confession went to the accused village Thiruvarur. But, D.W. 1 specifically deposed that there was no record available to show that on 24.02.2014, P.W.15 went to Thiruvarur. It is also clear from the records that the distance between the Thiruvarur and the Srivilliputhur is more than 300 Kms. Therefore, this Court inclines to accept the argument of the learned Counsel for the appellant that it is highly improbable that the accused, who hails from Tiruvarur District, would travel more than 300 kilometers and give a confession before an unknown Village Administrative Officer after several days from the date of occurrence.



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11. Accordingly, in view of the above inherent improbabilities attached with the above extra-judicial confession and the explanation furnished by the accused appears to be plausible and the failure of the trial Court to consider the explanation would result into finding that the extra-judicial confession is inherently improbable, unreliable and does not inspire confidence, the conviction passed against the appellant on the basis of the extra-judicial confession is not legally correct.

12. Discussion on last seen theory:

P.W.9 was examined to prove the last seen theory. Admittedly, he was not direct witness to prove the last seen theory. He deposed that D.2 had informed him on 16.02.2014 about the visit of the accused to his house. Apart from that, there is no other evidence available on record to show that accused was present in the house of the deceased at the time of the occurrence or was seen in the company of the deceased at any point of time prior to the death. Therefore, this Court holds that prosecution miserably failed to prove the last seen theory.



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13. Discussion on the finger print expert:

13.1. It is well settled that unless the prosecution proves that the specimen fingerprints of the accused were obtained in a manner known to law and properly compared, such evidence cannot be relied upon. It is relevant to refer the judgement of Division Bench of this Court in the case of *Arumugam and another vs State represented by Inspector of Police, Kottapatti Police Station, Dharmapuri District* reported in (2024) 3 MLJ (crl) 491, and the relevant portion of the said judgement is extracted as follows:

"(iii) It is well settled that the evidence of a fingerprint expert is not a substantive evidence and it can only corroborate the other evidence on record. However, as to what value could be attached to a report given by a police officer, who claims to be trained in fingerprint comparison, even for the purpose of corroboration, would depend upon the facts and circumstances of each case.

Therefore, in the absence of any definite evidence as to whether specimen fingerprints of the accused were taken and sent to the Fingerprint Bureau, the comparison would not be relevant, and it would be difficult to



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place reliance on such a report."
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14. In this case, to implicate the accused, the prosecution rest upon the alleged presence of his fingerprints at the scene of occurrence. According to the fingerprint expert (PW17), four chance prints were lifted, marked as M1, M2, M3, and M4. Out of these, M1 was identified as belonging to deceased No.1, M2 to deceased No.2, M3 to one Arul Kumar, and M4 to the accused.

15. According to the Investigating Officer, this constitutes one of the material links connecting the accused to the crime. However, no investigation whatsoever was conducted with regard to the presence of Arul Kumar's fingerprint at the scene. The Investigating Officer has not furnished any explanation for exonerating Arul Kumar from the scope of investigation, despite the presence of his fingerprint. This omission assumes significance and casts a serious doubt on the fairness of the investigation.



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16. Further, as per the prosecution, the accused was arrested only on 24.02.2014. However, the fingerprint expert is stated to have examined and given his opinion on 17.02.2014, which is prior to the arrest of the accused. In this context, no record has been produced by the prosecution to show as to how and when the specimen fingerprints of the accused were obtained.

17. There is no material on record to establish that the fingerprints of the accused were taken in accordance with law prior to 17.02.2014. No document has been marked to show that permission was obtained under the Identification of Prisoners Act for taking the specimen fingerprints. Indeed, there is no scrap of evidence available to demonstrate that the fingerprints of the accused were collected as per law.

18. Moreover, even in the expert opinion marked as an exhibit, there is no clear indication regarding the date on which the opinion was given or about the foundational data relied upon. In the absence of such foundational evidence, the opinion of the fingerprint expert becomes



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doubtful.

19. Further, fingerprint evidence, in the absence of corroborative circumstances, cannot by itself form the sole basis for conviction, particularly when the surrounding circumstances are doubtful and the possibility of involvement of other persons has not been ruled out. Therefore, the circumstances warrant applicability principle that when in the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits the accused, the accused is undoubtedly entitled to the benefit of doubt and the same was fortified by the following judgement of the Hon'ble Supreme Court in the case of ***Kali Ram vs. State of H.P.*** reported in ***(1973) 2 SCC 808*** and the Hon'ble Supreme Court has observed as under :

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases



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wherein the guilt of the accused is sought to be established by circumstantial evidence.”

19.1. In the case of **State of U.P. vs. Ashok Kumar Srivastava** reported in **(1992) 2 SCC 86** it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

20. In these circumstances, the alleged presence of the fingerprint of the accused cannot be safely relied upon and this Court holds that the conclusion reached by the learned trial judge on the basis of the fingerprint expert cannot be sustained.

21. Discussion on the prosecution case of “Murder for gain”:

The prosecution has projected the case as one of “murder for gain.” In such cases, it is incumbent upon the prosecution to establish,



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beyond reasonable doubt, two essential facts: first, that the recovered articles belonged to the deceased; and second, that those very articles were stolen by the accused.

21.1. In the present case, there is inconsistency with regard to the recovery of jewels as mentioned in the charge and the articles allegedly recovered under the recovery mahazar. The evidence of the recovery witnesses is not reliable, and the recovery itself has not been satisfactorily proved, particularly in light of the material contradictions between the testimony of the recovery witnesses and that of the Investigating Officer.

21.2. Further, while the charge refers to six items of jewellery, the recovery under Ex.P11 speaks of more than eleven items. This unexplained discrepancy creates serious doubt regarding the genuineness of the recovery. In such circumstances, it appears that the investigating agency has attempted to introduce materials to artificially support the theory of “murder for gain.”



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21.3. Moreover, even according to the prosecution, some of the articles were recovered from the bureau. The specific case of the prosecution is that the deceased refused to give money to the accused, and consequently, the accused hit the deceased with a grinder stone. In this context, there is no evidence to show that the bureau was broken open or that any key was used to open the bureau. No fingerprints were lifted from the bureau to connect the accused with the alleged theft.

21.4. It is the duty of the prosecution to prove that the accused had stolen the articles of the deceased and without the same, chain would get smepped. It is relevant to refer the following observation of the Hon'ble Supreme Court in the case of ***Mohd. Aman and another vs State of Rajasthan*** reported in ***(1997) 10 SCC 44*** which reads as follows:

"9. Unless the prosecution conclusively establishes that the articles recovered were stolen when the murder was committed, and not on an earlier occasion, there would be a missing link in the chain sofar as the specific accusation levelled against the accused is concerned."



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21.5. But, in this case no material circumstances were established either to hold or infer the accused had stolen the articles of the deceased. In view of the said significant deficiencies, this Court finds it difficult to accept the prosecution's version that the accused committed theft of the jewellery from the bureau or from the persons of the deceased and that the same was subsequently recovered at his instance.

21.6. Accordingly, the material aspects of the prosecution case remain unproved, and the theory of "murder for gain" is not established beyond reasonable doubt.

21.7. According to the prosecution, the complaint regarding the death of deceased Nos.1 and 2 was lodged by the sister of deceased No.1. However, in the said complaint, there is no reference whatsoever about the theft of any jewellery, or any allegation that the accused had stolen such jewels.



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21.8. In these circumstances, the projection by the prosecution regarding recovery of jewels from the bureau, as well as the alleged recovery of jewels said to have been removed from the bodies of the deceased by the accused, appears to be dubious. As already discussed, this version appears to be made up story by the investigating agency to implicate the accused.

22.Discussion on the blood stained clothes of the accused:

Further, with regard to the recovery of the bloodstained clothes of the accused, the prosecution relies upon Ex.P7. However, Ex.P7 does not clearly relate to the accused. It is stated that M.O.Nos.13 and 14 were recovered in the presence of the Village Administrative Officer. On the other hand, the evidence of the police witnesses suggests that the recovery was effected in the presence of police constables. These constables are not independent witnesses, and this inconsistency further weakens the prosecution case.



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22.1. Additionally, the forensic report (serology report) does not support or corroborate the prosecution version. In view of these discrepancies, the alleged recovery of the lungi and shirt, purportedly worn by the accused at the time of commission of offence, has not been proved beyond reasonable doubt.

22.3. Therefore, in all respects, the prosecution has failed to prove the case beyond reasonable doubt, and the accused is entitled to benefit of doubt.

23. Conclusion

In light of the above circumstances, this Court finds that the prosecution has failed to establish its case beyond reasonable doubt on all material aspects. Merely because this is a case of double murder, the Court cannot be swayed by the gravity or the heinous nature of the offence in the absence of legally admissible and reliable evidence linking the accused to the crime. It is well settled principle that no conviction can be passed on mere suspicion and the same cannot amount to legal proof. In this regard, it



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is relevant to extract the following judgement of the Hon'ble Supreme Court.

<i>Chandrakant Ganpat Sovitkar vs. State of Maharashtra, (1975) 3 SCC 16</i>	<i>Sharad Birdhichand Sarda [Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116</i>
<i>It is well settled that no one can be convicted on the basis of mere suspicion, however strong it may be.</i>	<i>Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof.</i>

24. Therefore, in view of the above discussion, the learned trial Judge has committed error in convicting the accused on suspicion alone which is not permissible in law.

24.1. In the present case, the material on record indicates that the appellant has been implicated as an accused on the basis of an alleged extra-judicial confession and purported recoveries. These pieces of evidence do not inspire confidence and appear to be artificial in nature. It seems that the investigating agency, faced with the frustration of being unable to identify the true perpetrator of the crime, has resorted to constructing a case rather



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than establishing proof of its commission through credible evidence. In this context it is apposite to refer the following portion of the judgment of the Hon'ble Supreme Court in the case of ***Prem Thakur v. State of Punjab***, reported in **(1982) 3 SCC 462** which reads as follows:

11. ...An a priori suspicion that the accused has committed the crime transforms itself into a facile belief that it is he who has committed the crime. Human mind plays that trick on proof of the commission of a crime by resisting the frustrating feeling that no one can be identified as the author of that crime. In the case before us, there is no doubt that five persons were murdered. Unquestionably, every effort had to be made to find out who committed those murders. But the duty is not done by holding someone or the other guilty somehow or the other...

25. Accordingly, the Criminal Appeal is allowed on the following terms:

25.1.The conviction and sentence imposed on the accused in S.C.No.61 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Srivilliputhur dated 26.07.2023, is hereby set aside.

25.2.The accused is acquitted of all charges and shall be released



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forthwith, unless his presence is required in connection with any other case.

25.3. If any fine amount, he paid, shall be refunded forthwith.

Consequently, connected Criminal Miscellaneous Petition stands closed.

[N.A.V, J.] & [K.K.R.K,J.]
21.04.2026

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
gvn/sbn

To:-

- 1.The Sessions Judge, Fast Track Mahila Court,
Srivilliputhur.
- 2.The Inspector of Police,
Srivilliputhur Town Police Station,
Srivilliputhur,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Superintendent,
Central Prison,
Madurai.
- 5.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai.



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N.ANAND VENKATESH, J.
and
K.K.RAMAKRISHNAN, J.

gvn/sbn

Judgment made in
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Dated:21.04.2026