BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	12.10.2023
Pronounced on	08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.A.(MD) No.448 of 2021

1.Shanmugam,
S/o.Velu

2.Praveenkumar,
S/o.Shanmugam

3.Murugan,
S/o.Ganesan ... Appellants

Vs.

State rep. by its,
The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.
(Crime No.530/2017) ... Respondent

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 [Act 2 of 1974] praying to call for the records and set aside the Judgment and Sentence passed in S.C.No.126 of 2018 dated 29.09.2021 by the learned Fast Track Mahila Judge, Ramanathapuram.

For Appellants : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

J U D G M E N T

R.SAKTHIVEL, J.

This Criminal Appeal is preferred by the Appellants/Accused assailing the Judgment dated 29.09.2021 passed by the Fast Track Mahila Court, Ramanathapuram [for the sake of convenience and clarity, hereinafter referred to as 'Trial Court'] in Sessions Case No.126 of 2018 in which the Appellants [for the sake of convenience and clarity, hereinafter 'Appellants' are called 'Accused' as described before and by the Trial Court] were convicted as follows:-

Accused	***Provision under which convicted***	***Sentence***
Accused No.1	Section 302 of IPC	To undergo Rigorous Imprisonment for Life and a fine of Rs.1000/-, in default of payment of fine, further undergo Simple Imprisonment for 1 year.
	Section 201 of IPC	To undergo Rigorous Imprisonment for 2 years and a fine of Rs.1000/-, in default of payment of fine, further undergo Simple Imprisonment for 6 months.
Accused No.2	Section 201 of IPC	To undergo Rigorous Imprisonment for 2 years and a fine of Rs.1000/-, in default of payment of fine, further undergo Simple Imprisonment for 6 months.

Accused No.3	Section 201 of IPC	To undergo Rigorous Imprisonment for 2 years and a fine of Rs.1000/-, in default of payment of fine, further undergo Simple Imprisonment for 6 months.
Note:- The substantial period of sentences was ordered to run concurrently. The period of imprisonment, if any already undergone, was ordered to be set off under Section 428 of Cr.P.C.		

2. The case of the prosecution, in brief, as follows:

2.1. Accused No.2 is the son of Accused No.1 and Accused No.3 is the brother-in-law of Accused No.2. Accused No.2 was born through the first wife of Accused No.1. The first wife of Accused No.1 passed away 15 years ago. Then, Accused No.1 married one Kanaga as his second wife. She lived estranged from her husband and their two children. Out of the marriage between Accused No.1 and Kanaga, a female child was born. Accused No.1 had Brick Kiln Unit on his land and lived with Kanaga in the Brick Kiln Unit. Later, Accused No.1 suspected her fidelity, due to which, a frequent quarrel arose between them. Hence, Accused No.1 decided to kill her.

2.2. On 24.07.2017, at about 11 a.m., when Kanaga was lying down in the hut, Accused No.1 with an intention to kill her entered the hut and

caused injury on her head, back and rib by using wooden log. Kanaga went unconscious. Immediately, Accused No.1 called Accused No.2 and asked him to admit her to the Government Hospital. Accused Nos.2 & 3 brought Kanaga in the Car of Accused No.3 and admitted her to the Government Hospital, Ramanathapuram for treatment by stating that she fell down from a motorcycle.

2.3. The next day, i.e. on 25.07.2017, Accused No.1 with an intention to kill Kanaga asked Accused No.2 to discharge the Kanaga from the Hospital. Accused Nos.2 and 3 went to the Hospital, discharged Kanaga against the medical advice and dropped her in the Omni Van of Accused No.3 in the Brick Kiln Unit at 01.00 p.m. Thereafter, Accused No.1 with an intention to kill Kanaga strangulated her neck by using his hands and her sacred thread and thereby killed her. Thereafter, Accused No.1 called Accused Nos.2 & 3 and informed them about the occurrence. Accused Nos.2 & 3 came to the scene of occurrence and hid the wooden log. Accused No.1 hid the blood stained pillow, bedsheet and sacred thread in a pit. They hastily brought the dead body of Kanaga (deceased) to a graveyard and tried to burn it.

2.4. In the meantime, Mr.Dharmaraj (P.W.1), Village Administrative Officer [for the sake of convenience and clarity, hereinafter referred to as 'VAO'] of Pullangudi Village received information about the incident. On suspicion, he filed a Complaint (Ex.P1) before the Devipattinam Police Station. Based on the Complaint (Ex.P1), the Inspector of Police registered an FIR in Crime No.234/2017 under Section 174 of 'The Criminal Procedure Code, 1973' (2 of 1974) [for the sake of convenience and clarity, hereinafter referred to as 'Cr.P.C.'], i.e. Suspicious Death. The police rushed to the graveyard, took the dead body into their custody and sent same to the Government Hospital for post-mortem. After post-mortem, Inspector of Police (P.W. 17) conducted inquest on the dead body and prepared Inquest Report (Ex.P15).

2.5. On 31.07.2017, at 09.00 a.m., when Dharmaraj (P.W.1), VAO was in his office, Accused No.1 along with Accused No.2 came to the office of P.W.1 and voluntarily gave a Statement (Ex.P16). P.W.1 recorded the Statement (Ex.P16) given by Accused No.1 in writing and obtained signature of the Accused No.1 and witness signature of Accused No.2. Thereafter, P.W.1 handed over Accused Nos.1 & 2 to the Inspector

of Police (P.W.17) in the Devipattinam Police Station along with the Statement (Ex.P16).

2.6. Inspector of Police (P.W.17) arrested Accused Nos.1 & 2 in the presence of P.W.1 and the Village Assistant. At that time, Accused No.1 voluntarily gave a confession. In the said confession, Accused No.1 stated that he will identify the place where he hid the pillow, bedsheet and sacred thread. The admissible portion of the confession of Accused No.1 was marked as Ex.P23. Thereafter, Accused No.1 led P.W.1 to his Brick Kiln Unit at 03.00 p.m. and brought out a blood stained pillow (M.O.1), bedsheet (M.O.2) and sacred thread (M.O.3). P.W.17 seized the said material objects in the presence of witnesses. On the same day, at 03.30 p.m., Accused No.2 brought out a Wooden log (M.O.4) to P.W.17 and P.W.17 seized the same in the presence of witnesses and prepared a Seizure Mahazer. Thereafter, P.W.17 inspected the Brick Kiln premises and prepared Rough Sketch (Ex.P14) and Observation Mahazer. Thereafter, P.W.17 altered the Section of law from 174 of Cr.P.C. to 302, 201 of IPC and sent Alteration Report (Ex.P24) and the Material Objects to the Judicial Magistrate Court.

2.7. On 08.08.2017, Accused No.3 surrendered before the Judicial Magistrate, Tiruvadanai and was remanded to judicial custody. On 10.08.2017, during the investigation, he learnt that the occurrence place comes under the jurisdiction of Kenikkarai Police Station. Hence, he sent the entire case files to his higher officials for transferring the case to the concerned jurisdictional police station.

2.8. On 14.08.2017, Mr.Senthil Kumar (P.W.16), Inspector of Police, Kenikkarai Police Station received the case file from the office of the District Crime Records Bureau and registered an FIR in Crime No. 530/2017 of Kenikkarai Police Station under Sections 302 and 201 of IPC. The said F.I.R. was marked as Ex.P13. P.W.16 examined witnesses and sent a requisition letter to the Judicial Magistrate requesting to send Material Objects to the Forensic Science Laboratory [for the sake of convenience and clarity, hereinafter referred to as FSL]. Based on the requisition, Material Objects were sent to FSL and the Chemical Report and Biology Report were marked as Exs.P19 & P20. On 08.11.2017, P.W. 16 examined Accused No.3 and seized Omni Van bearing registration No. TN 65 AC 7378 (M.O.5) from Accused No.3. Thereafter, P.W.17

examined Doctors and Experts attached to the FSL and recorded their Statements. After completion of his investigation, P.W.16 filed Final Report under Sections 302 & 201 of IPC against Accused.

Trial:-

3. The learned Sessions Judge after hearing the Public Prosecutor and the counsel for the Accused and after perusing the case file, framed Charges under Sections 302 & 201 of IPC against the Accused No.1 and under Sections 201 read with 109 of IPC against Accused Nos.2 & 3.

4. In order to prove the case, the prosecution examined P.W.1 to P.W.17 and marked Exs.P1 to P24 and M.O.1 to M.O.5. On the Accused's side, no witness was examined and no material object was filed. After full trial and after hearing both sides, the learned Session Judge came to the conclusion that the prosecution proved the Charges levelled against the Accused No.1 under Section 302 & 201 of IPC and the Charges levelled against Accused Nos.2 & 3 under Section 201 of IPC alone. Accordingly, the learned Sessions Judge convicted and sentenced Accused as stated supra.

Appeal:-

5. Aggrieved with the above conviction and sentence, Accused Nos. 1 to 3 preferred this appeal under Section 374(2) of Cr.P.C. This Court has perused the case file and grounds of appeal. After hearing both sides arguments, following points arose for consideration:-

1. Whether the prosecution has proved charges levelled against the Accused No.1 under Section 302 & 201 of IPC beyond reasonable doubt?
2. Whether the prosecution has proved charges levelled against Accused Nos.2 & 3 under Section 201 of IPC beyond reasonable doubt?
3. Is there any reason to interfere with the Trial Court Judgment?

Submissions with regard to Point Nos.1 & 2

6. The learned counsel for the Accused argued that the case is fully rested on circumstantial evidence and there is no eye witness in this case; that P.W.1 to P.W.6 & P.W.8 are private witnesses, and they have not supported the prosecution case; that the prosecution did not prove the chain of events of the alleged occurrence beyond reasonable doubt; that

the alleged motive projected by the prosecution has not been proved and there is no tangible evidence to show that there is a motive in the alleged commission of murder; that as per the evidence of P.W.1, Accused persons were arrested on 25.07.2017 itself, hence, the arrest of Accused Nos.1 & 2 and recovery of Material Objects (M.O.1 to M.O.4) cannot be believed; that the deceased herself had stated to the Doctor at the time when she was admitted in the Hospital on the day before the occurrence, i.e. 24.07.2017 that she fell down from a motorcycle and sustained injury due to the accident and that the Trial Court has simply overlooked the last words of the deceased which runs contra to the prosecution case. Further, the learned counsel submitted that as per medical evidence, hyoid bone of the deceased was so intact. The said fact is contrary to the prosecution case. The learned counsel further submitted that the prosecution has not established the foundational facts, hence, onus does not shift to the Accused and therefore, the Trial Court has wrongly come to the conclusion that onus shifted to Accused under Section 106 of 'The Evidence Act, 1872' (Act No.1 of 1872) [for the sake of convenience and clarity, hereinafter referred to as 'Evidence Act']. In support of his contention, the learned counsel relied on the following case laws:-

i. ***Jose***'s case [***Jose alias Pappachan Vs. Sub-Inspector of Police, Koyilandy and another, reported in (2016) 10 SCC 519***];

ii. ***Satish Nirankari***'s case [**Satish Nirankari Vs. State of Rajasthan, reported in (2017) 8 SCC 497**];

iii. ***Indrajit Das***'s case [***Indrajit Das Vs. The State of Tribura, reported in 2023 LiveLaw (SC) 152***];

iv. ***Dharmendra Nishad***'s case [***Dharmendra Nishad Vs. State of U.P., Neutral Citation No. 2021:AHC:101426-DB***].

7. Per contra, the learned Additional Public Prosecutor appearing for the State argued that the deceased is none other than the wife of the Accused No.1 and the step-mother of Accused No.2; that Accused tried to burn the dead body of the deceased hastily, hence, the conduct of Accused persons is relevant under Section 8 of the Evidence Act; that the inquest report revealed that the deceased died suspiciously; that Accused were brought to police station on 25.07.2017 only for an enquiry; that the post-mortem report and the medical evidence clearly established that the deceased died due to strangulation and that in all strangulation cases, hyoid bone may not be fractured. The learned Additional Public

Prosecutor further submitted that P.W.1 is a Village Administrative Officer and has no grudge or vengeance against Accused persons. Hence, the statement given by Accused No.1 to P.W.1 is clearly admissible as extra judicial confession. He further submitted that the prosecution has proved its case clearly and cogently. Hence, onus of proof shifted to Accused persons to explain the circumstances against them under Section 106 of Evidence Act. He further submitted that the Trial Court after considering the evidence and material, came to the conclusion that Accused No.1 committed offence punishable under Section 302 & 201 of IPC and Accused Nos.2 & 3 committed the offence punishable under Section 201 of IPC. The Additional Public Prosecutor relied on the following case laws in support of his arguments:-

i. ***Ponnusamy***'s case [***Ponnusamy Vs. State of Tamil Nadu reported in (2008) 5 SCC 587 : (2008) 2 SCC (Cri) 656]***;
ii. ***Ravirala Laxmaiah***'s case [***Ravirala laxmaiah Vs. State of Andhra Pradesh reported in (2013) 9 SCC 283***];
iii. ***Prem Singh***'s case [***Prem Singh Vs. State (NCT of Delhi) reported in (2023) 3 SCC 372***].

Discussion to Point Nos.1 & 2

8. Before going into the merits of the case, it is apposite to state the legal position in respect of a case rested only upon circumstantial evidence. The Hon'ble Supreme Court in ***Hanumant***'s case [***Hanumant Vs. State of Madhya Pradesh, reported in (1952) 2 SCC 71***] has held as follows:

> *'11...In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge ((1838) 2 Lew. 227), where he said:-*
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> > *"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."*
>
> *12. 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 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...'

8.1. Further, the decision in ***Sharad Birdhichand Sarda***'s case [***Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116 : 1984 SCC (Cri) 487***] is construed to be *locus classicus* on the principles of circumstantial evidence. In the above said decision, the Hon'ble Supreme Court while referring to ***Hanumant***'s case held in Paragraph Nos.153 & 154 as follows:

153. *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

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

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 Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"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."

(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,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(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.

154. *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.*

8.2. In ***Ashok Kumar Srivastava***'s case [***State of Uttar Pradesh Vs. Ashok Kumar Srivastava reported in (1992) 2 SCC 86***], the Hon'ble Supreme Court has pointed out that great care must be taken while evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be adopted. Further, 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.

8.3. As far as the extra-judicial confession is concerned, it is admissible under Section 24 of the Evidence Act, provided, if it is free from any inducement, threat or promise. It is a rule of caution that the Court would generally look for independent reliable corroboration before placing reliance upon an extra-judicial confession. But when such extra-judicial confession is corroborated with several other proved

circumstances, the Court can rely upon such extra-judicial confession vide ***Balwinder Singh***'s case [***Balwinder Singh Vs. State reported in 1995 SUPP (4) SCC 259***].

8.4. As far as the confession given by the Accused No.1 is concerned, if a confession is made after arrest and if it leads to discovery of new facts or recovery of any article, the same alone is admissible under Section 27 of the Evidence Act [vide ***Pulukuri Kottaya Vs. King Emperor reported in AIR 1947 PC 67***]

9. In the light of the above legal principles, this Court approaches this case. The following circumstances have been projected by the prosecution to connect the Accused to the offence for which they were convicted:-

i. On 24.07.2017, Accused No.1 attacked the deceased by using wooden log and caused injury on head, back and rib of the deceased and called Accused Nos.2 & 3 and asked them to admit the deceased in the Government Hospital, Ramanathapuram.
ii. On 25.07.2017, Accused Nos.2 & 3 went to the Government Hospital, Ramanathapuram and discharged the deceased against medical advice.

iii. On 25.07.2017, Accused Nos.2 & 3 dropped the deceased in the alleged place of occurrence, i.e. Brick Kiln Unit.

iv. Accused No.1 with an intention to kill the deceased strangulated her neck by using her sacred thread and his hands and killed her.

v. Arrest and confession of Accused No.1

vi. Accused No.1 hid the blood stained pillow, bedsheet and sacred thread in a pit in his Brick Kiln Unit.

vii. Accused No.2 hid the wooden log said to have been used for committing murder in the Brick Kiln Unit premises.

viii. All the Accused persons brought the dead body of the deceased to the graveyard and tried to burn the dead body hastily.

ix. The evidence of post-mortem report and deposition of post-mortem doctor that the deceased died due to strangulation.

x. The alleged extra judicial confession

xi. Recovery of M.O.1 to M.O.5.

xii. Motive

10. Circumstance Nos.(i), (ii) & (iii) :- As per the prosecution case, Accused No.1 attacked the deceased on 24.07.2017 in his hut in Brick Kiln Unit and caused injury on her head, back and rib. Admittedly, there

was no eye witness for the said occurrence. According to the prosecution, at the instances of Accused No.1, Accused Nos.2 & 3 brought the deceased to the Government Hospital, Ramanathapuram and admitted her as in-patient. The further case of the prosecution is that at the instances of Accused Nos.2 & 3, the deceased did not reveal the true facts about her injuries before the Doctor. Dr.Gnana Sundari (P.W.13) in her evidence deposed that on 24.07.2017, at about 01.15 p.m., Kanaga (deceased), aged about 32 years was brought to the Hospital for treatment. At that time, Kanaga (deceased) was conscious and oriented. She further deposed that Kanaga (deceased) had informed her that she fell down herself. Accordingly, she made entry in the 'In-patient Case Register' as 'Accidental Fall'. The In-patient Case Register was marked through the Doctor (P.W.13) as Ex.P21. In the said Register, it has been noted that "*pt & relatives not willing for AR entry*". In the said Register, the Doctor has recorded in two places as 'Accidental Fall'. On perusal of the records, it is seen that C.T. Scan for Brain and Chest was done. In C.T. Report dated 24.07.2017, it has been noted as follows:-

C.T. BRAIN

Depressed fracture seen in posterior frontal bone.

Minimal subdural air pocket seen.

Bony defect seen in left posterior frontal bone.

Cerebellum normal.

Fourth ventricle normal.

Cerebello pontine angle normal.

Sella normal.

Basal cisterns normal.

Falx cerebri is seen in midline.

Third and lateral ventricles are normal.

Brain stem is normal.

Sulci and gyri are normal.

No evidence of intracerebral, intrventricular haemorrhage, subdural or extradural haematoms.

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C.T. CHESH

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Comminuted fracture seen in body of scapula right side.

Right minimal haemothorax seen.

Fracture seen in 8th, 9th, rib right side.

No evidence of meditational lymphadenopathy.

Ascending aorta, arch of aorta and descending aorta are normal.

Heart is normal.

10.1. From the medical evidence, it can be seen that the deceased had injury on her head and her rib.

10.2. P.W.13 in her deposition has stated that in the 'Case Sheet', it has been noted that at the time of admission, Kanaga (deceased) was conscious and oriented and she told the Doctor that she was injured due to 'Accidental Fall'. Dr.Kannagi (P.W.12) further deposed that Kanaga was admitted in 'Women Surgical Ward'. On 25.07.2017, P.W.12 Doctor examined Kanaga and found head injury of 10 x 3 cm. measurement on her posterior head. She further deposed that she did not know the details of the person who brought and admitted Kanaga to the Hospital. Further, she deposed that in this case, AIR (Accident Information Report) entry was not prepared. From the deposition of Doctors, there is no evidence to say that Accused Nos.2 & 3 brought Kanaga to the Government Hospital and admitted her.

10.3. According to the prosecution, Accused Nos.2 & 3 went to the Government Hospital, Ramanathapuram on 25.07.2017, discharged Kanaga (deceased), and dropped her in the Omni Van at Brink Kiln Unit.

Dr.Gnana Sundari (P.W.13) who admitted Kanaga (deceased) as in-patient in the Government Hospital for treatment on 24.07.2017, did not state in her deposition that Accused Nos.2 & 3 were present at Hospital while admitting and while discharging Kanaga. Dr.Kannagi (P.W.12) who gave treatment to Kanaga (deceased) in her deposition has stated that AIR (Accident Information Report) has not been made in this case. In her evidence, she did not state that Accused Nos.2 & 3 came to the Hospital on 25.07.2017 and discharged Kanaga (deceased). Ex.P21 was marked through P.W.13 Doctor. In the said Register, it has been mentioned that the patient was discharged against medical advice on 25.07.2017 at 2.00 p.m. In the back side of the Register, it has been mentioned as follows:-

AMA DIS on 25.7.17 2 pm.

என் சின்னம்மாவை மருத்துவரின் அறிவுரையை ஏற்க மறுத்து வீட்டிற்கு அழைத்துச் செல்கிறேன்

/sd./

10.4. It is alleged that the signature found in the document is that of Accused No.2. But, the prosecution did not prove the said writings as per law. Hence, this Court is of the considered view that the prosecution case

that Accused Nos.2 & 3 admitted Kanaga (deceased) in the Hospital on 24.07.2017 and discharged on 25.07.2017 against medical advice is doubtful and is not proved by the prosecution.

10.5. According to the prosecution case, Accused Nos.2 & 3 dropped Kanaga (deceased) after discharge from the Hospital in the Brick Kiln Unit. In this regard, there is no evidence available on record. The prosecution has failed to establish the above said circumstances.

11. Circumstance Nos.(iv) & (ix) :- According to the prosecution, Accused No.1 strangulated Kanaga (deceased) by using her sacred thread. In this regard, Post-Mortem Certificate was marked as Ex.P10 and Final Report was marked as Ex.P11. In Ex.P10 Post-Mortem Report, it has been stated as follows:-

> *The body was first seen by the undersigned at 12.30 A.M. on 26.7.17. Its condition then was Rigor mortis in all 4 limbs (+) , Post-mortem commenced at 12.30 A.M. on 26.7.17. Appearances found at the post-mortem 45 years old female body lying on the back.*
>
> *Eyes closed, mouth closed, No secretion, fluid, froth in nostril*
> *- Sutured laceration 6 x 1 cm in the ® parieto occipital region of scalp present*

- 6 x 10 cm contusion present over the ® scapular region

Neck – 1 cm width ligature mark – transverse in position present around the neck - sparing only in the posterior aspect of the neck.

No neck elongation. Neck muscle bruising present, carotid arteries contused. Base of ligature red and hyoid bone intact. Face congested.

Thorax

lungs congested, no free fluid, heart filled with unclotted blood. Fracture of the ® scapular (+). Fracture of 8th 9th rib ® side (+). minimal blood in ® pleural cavity (+).

Abdomen -

liver / spleen / kidney congested
Stomach – no fluid contents (+)
Smell and large intestine – air/fluid filled.
No free fluid in the abdomen.

Skull

Depressed fracture of the frontal bone in the ® side posterior aspect.
no intracranial hemorrhage. Congestion of the brain and face.
® parieto occipito frontal subgaleal hematoma

Opinion as to cause of death – Viscera sent for toxicological analysis

(a) Reserved pending report of toxicological analysis .

11.1. Post-Mortem Doctor (P.W.14) in his final opinion (Ex.P11) has opined that '*No poison detected in the Viscera. The deceased appeared to have died about 16 to 24 hours before post mortem due to ligature strangulation.*'

11.2. The learned counsel appearing for Accused submitted that in this case, hyoid bone was intact and therefore, death of Kanaga (deceased) may be due to suicide and not due to alleged strangulation. In this regard, he relied on the decision of the Hon'ble Supeme Court in ***Satish Nirankari***'s case referred to *supra*. The fact of the said case is that one Pooja was murdered by Accused therein who had strangulated her neck by way of squeezing. In the said facts and circumstances, the Hon'ble Supreme Court after referring to ***Modi's Medical Jurisprudence and Toxicology*** held as follows:-

> ***38.*** *... If the death would have been strangulation then fracture of larynx and trachea and hyoid bone was a must, there should have been scratches, abrasions and finger nail marks and bruises on the face, neck and other parts of the body. ...*

11.3. According to the learned Additional Public Prosecutor, hyoid bone may, in rare cases, be fractured. He relied on the decision of the

Hon'ble Supreme Court in ***Ravirala Laxmaiah***'s case referred to *supra*. The facts of the said case are that one Balamani (deceased) was the second wife of the Accused therein. Due to suspicion on her fidelity, Accused therein began to beat her up at times. The deceased went to her parental house because of the ill-treatment and thereafter upon the advice of the elders in her family, she decided to go back and live with the Accused therein. Accused and deceased therein were taken by the paternal uncle of the deceased to Hyderabad, where also, they would often quarrel, and the Accused therein would beat her up. They eventually returned to their village and the Accused therein had taken Balamani (the deceased) to Srisailam, where, they worked at Eagalapenta, attending to the petty works in and around the colony for some times. On 14.07.2003, the Accused telephonically informed deceased therein's father that Balamani (deceased) had committed suicide. The family members of the deceased therein rushed to the spot. When they met the Accused therein on their way, Accused had informed that Balamani committed suicide by hanging herself in the Quarter. On being requested by the deceased's father to accompany them to the spot, he refused and escaped from there. The family of the deceased thereafter reached the spot where they found the dead body of the deceased therein emitting a foul odor and blood was

flowing out of the house over its threshold. The dead body of the deceased therein was lying on the floor with two granite stones near the head of the dead body. Then, the deceased therein's father filed an FIR [First Information Report] regarding the incident alleging that the Accused therein had killed his daughter on the night of 12.07.2003, by way of strangulation. Her nose and ears were viciously cut, and all her gold ornaments and anklets were stolen. In these facts and circumstances of the case, the Hon'ble Supreme Court has held as follows:-

> ***16.*** *So far as the medical evidence is concerned, the High Court has dealt with the opinion of Dr K. Padmavathi (PW 10), who has referred to Modi's Medical Jurisprudence and Toxicology, wherein it has been stated that, "hyoid bone and superior cornua of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation", although the larynx and the trachea may, in rare cases, be fractured as a result of a fall. The post-mortem has revealed that the fracture of the hyoid bone is characterised by the absence of haemorrhage in the tissues around the fracture.*
>
> ***17.*** *.....*
>
> ***18.*** *So far as the medical evidence is concerned, the issue involved herein is no more res integra. This Court dealt with the issue in* ***Ponnusamy v. State of T.N. [Ponnusamy v. State of T.N., (2008) 5 SCC 587 : (2008) 2 SCC (Cri) 656 : AIR 2008 SC 2110]*** *and observed as under : (SCC pp. 594-96, paras 23-26)*

"23. It is true that the autopsy surgeon, PW 17, did not find any fracture on the hyoid bone. Existence of such a fracture leads to a conclusive proof of strangulation but absence thereof does not prove the contra. In Taylor's Principles and Practice of Medical Jurisprudence, 13th Edn., pp. 307-08, it is stated:

> *'The hyoid bone is "U" shaped and composed of five parts : the body, two greater and two lesser horns. It is relatively protected, lying at the root of the tongue where the body is difficult to feel. The greater horn, which can be felt more easily, lies behind the front part of the strip muscles (sternomastoid), 3 cm below the angle of the lower jaw and 1.5 cm from the midline. The bone ossifies from six centres, a pair for the body and one for each horn. The greater horns are, in early life, connected to the body by cartilage but after middle life they are usually united by bone. The lesser horns are situated close to the junction of the greater horns in the body. They are connected to the body of the bone by fibrous tissue and occasionally to the greater horns by synovial joints which usually persist throughout life but occasionally become ankylosed.*
>
> *Our own findings suggest that although the hardening of the bone is related to age there can be considerable variation and elderly people sometimes show only slight ossification.*
>
> *From the above consideration of the anatomy it will be appreciated that while injuries to the body are unlikely, a grip high up on the neck may readily produce fractures of the greater horns. Sometimes it would appear that the local*

pressure from the thumb causes a fracture on one side only. While the amount of force in manual strangulation would often appear to be greatly in excess of that required to cause death, the application of such force, as evidenced by extensive external and soft tissue injuries, make it unusual to find fractures of the hyoid bone in a person under the age of 40 years.

As stated, even in older people in which ossification is incomplete, considerable violence may leave this bone intact. This view is confirmed by Green. He gives interesting figures : in 34 cases of manual strangulation the hyoid was fractured in 12 (35%) as compared with the classic paper of Gonzales who reported four fractures in 24 cases. The figures in strangulation by ligature show that the percentage of hyoid fractures was 13. Our own figures are similar to those of Green.'

24. In Journal of Forensic Sciences, Vol. 41 under the title — Fracture of the Hyoid Bone in Strangulation : Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:

'The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, post-mortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument

(ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone. We compared the case profiles and xeroradiographic appearance of the hyoids of 20 victims of homicidal strangulation with and without hyoid fracture (n = 10, each). The fractured hyoids occurred in older victims of strangulation (39 ± 14 years) when compared to the victims with unfractured hyoids (30 ± 10 years). The age dependency of hyoid fracture correlated with the degree of ossification or fusion of the hyoid synchondroses. The hyoid was fused in older victims of strangulation (41 ± 12 years) whereas the unfused hyoids were found in the younger victims (28 ± 10 years). In addition, the hyoid bone was ossified or fused in 70% of all fractured hyoids, but, only 30% of the unfractured hyoids were fused. The shape of the hyoid bone was also found to differentiate fractured and unfractured hyoids. Fractured hyoids were longer in the anterior-posterior plane and were more steeply sloping when compared with unfractured hyoids. These data indicate that hyoids of strangulation victims, with and without fracture, are distinguished by various indices of shape and rigidity. On this basis, it may be possible to explain why some victims of strangulation do not have fractured hyoid bones.'

25. Mr Rangaramanujam, however, relied upon Modi's Medical Jurisprudence and Toxicology, 23rd Edn. at p. 584 wherein a difference between hanging and strangulation has been stated. Our attention in this connection has been drawn to Point 12 which reads as under:

'Hanging	*Strangulation*
12. Fracture of the larynx and trachea—Very rare and that too in judicial hanging.	*Fracture of the larynx and trachea—Often found also hyoid bone (sic fracture).'*

26. A bare perusal of the opinion of the learned author by itself does not lead to the conclusion that fracture of hyoid bone, is a must in all the cases."

11.4. In this case, P.W.14 Post-Mortem Doctor has deposed that the deceased died due to the strangulation. But, there is no evidence to say that Accused No.1 and deceased were last seen together. According to the prosecution evidence, Accused persons brought the dead body to the graveyard and tried to burn it at 2.40 p.m. In the Medical Reports, it has been noted that the deceased was discharged against the medical advice at 2.00 p.m. Hence, as already stated supra, there is no evidence to state that Accused Nos.2 & 3 dropped Kanaga (deceased) in the Brick Kiln Unit. Further, at the same time, there is no reason to reject the evidence of P.W. 14 Post-Mortem Doctor. Hence, the prosecution has proved that the deceased died due the strangulation by neck. But, the prosecution miserably failed to establish that Accused No.1 has committed the offence. There is no evidence available on record to connect the crime with the Accused.

12. Circumstance No.(v), (vi), (vii), (viii), (x) & (xi) :- P.W.1 in his evidence has deposed that on 25.07.2017, as per his complaint, police came to graveyard, seized the dead body of the deceased and sent the same to the Hospital for post-mortem examination. Further, he deposed that at that time, police enquired the Accused Nos.1 & 2 and took them to the police station. The prosecution case is that on 31.07.2017, Accused No.1 came to the office of P.W.1 along with Accused No.2 and gave confession before P.W.1 (VAO). As stated *supra*, extra-judicial confession is considered as a week piece of evidence and corroboration is necessary in such cases. P.W.1 - VAO is the complainant in this case. Hence, in these circumstances, no ordinary man would have appeared before the defacto complainant and given confession. Admittedly, the prosecution did not produce any independent evidence to corroborate the evidence of P.W.1. Hence, the evidence of P.W.1 that Accused No.1 came to his office along with Accused No.2 and gave confession is not believable. In these circumstances, this Court is of the view that extra-judicial confession said to have been given by Accused No.1 is not proved beyond reasonable doubt.

12.1. As far as recovery of Material Objects is concerned, P.W.1 has deposed that on 25.07.2017 itself, police came to the graveyard, seized dead body of the deceased and brought Accused to police station. The learned Additional Public Prosecutor has submitted that the police called Accused Nos.1 & 2 only for an enquiry and the police did not arrest them on that day. It is alleged that Accused No.1 voluntarily gave a confession to the Investigating Officer (P.W.17). The admissible portion of the confession was marked as Ex.P23. Based on the confession, M.O.1 to M.O.4 were said to have been seized by the P.W.17. It has been stated that the Investigating Officer (P.W.17) found that blood has been stained in M.O.1 & M.O.2 and therefore, M.O.1 & M.O.2 were sent to Forensic Science Laboratory (FSL). FSL Report was marked as Ex.P20. In the said Report, it has been stated that blood stains in M.O.1 & M.O.2 relates to 'B' Group. But, the prosecution did not collect the sample blood from the deceased. No reason was assigned by the prosecution in this regard. Hence, the recovery of M.O.1 to M.O.4 by the Investigating Officer (P.W. 17) based on the confession of Accused No.1 has not been established by the prosecution. If the prosecution has established that the blood stains in M.O.1 and M.O.2 is that of the deceased, then only the Court can draw inference that the Accused No.1 has voluntarily given confession.

Otherwise, it cannot be construed that the blood stains in M.O1 & M.O.2. is that of the deceased. The prosecution thus failed to prove the same and therefore, the recovery of material objects (MO1 to MO4) is doubtful.

13. Circumstance No.(xii) :- In a Criminal Case, motive is irrelevant if eye witnesses are available. At the same time, if a case is rested upon Circumstantial Evidence, motive is also an additional link to prove the prosecution case. In this case, the prosecution did not prove the alleged motive. Thus, the prosecution has not proved the chain of circumstances beyond reasonable doubt.

14. Hence, this Court comes to the conclusion that the prosecution has not proved charges levelled against Accused. Therefore, Point No.1 & 2 are answered in favour of the Accused and against the prosecution.

Point No.3

15. The Trial Court has believed the version of the prosecution evidence and found that the prosecution proved the case beyond reasonable doubt. In view of the discussions above, it is clear that the prosecution has miserably failed to prove that Accused Nos.2 & 3

admitted and later discharged Kanaga (deceased) from the Hospital. Further, the prosecution has miserably failed to collect the blood sample of the deceased with a view to prove that the blood stains in the M.O.1 & M.O.2 is that of the deceased. The Investigating Officer (P.W.17) did not assign any reasons for the non-collecting of deceased's blood for identifying her blood group.

15.1. The Trial Court has relied on Section 106 of Evidence Act and came to the conclusion that the burden of proof shifted to the Accused. This Court is of the view that only if the prosecution establishes the case, onus of proof can be shifted to Accused. The prosecution failed to prove that the Accused persons committed murder and establish the prosecution case. Onus does not shift to the Accused. Hence, this Court is of the view that the Trial Court findings ought to be interfered with by this Court and accordingly it is interfered with. The Point No.3 is answered accordingly in favour of the Accused and against the prosecution.

16. Before writing operative portion of the Judgment, this Court wants to state that the Trial Court concluded that the deceased's daughter

namely, Pradeepa is entitled to receive compensation from the Government for education expenses, food and future prospects and requested the District Legal Service Authority to fix the compensation to be paid to the deceased's daughter Pradeepa. Though the impugned Judgement dated 29.09.2021 passed by the learned Fast Track Mahila Judge, Ramanathapuram in S.C.No.126 of 2018 is to be interfered with by this Judgment, the findings of the Trial Court in respect of payment of compensation to the deceased daughter Pradeepa is liable to be sustained and is accordingly sustained. District Legal Service Authority, Ramanathapuram is directed to act in this regard as per the directions of the Trial Court without influence of the result of the appeal.

17. Similarly, the findings of the Trial Court with regard to the return of M.O.5 [Omni Van bearing registration No.TN 65 AC 7378] is not interfered with by this Court and is to be sustained.

18. In the result,

i. This Criminal Appeal is allowed.
ii. The impugned Judgment dated 29.09.2021 passed by the learned Fast Track Mahila Judge, Ramanathapuram in S.C.No.126 of 2018 is hereby set aside.

iii. The Accused are acquitted from the charges levelled against them.

iv. Accused No.1 shall be released forthwith if his custody is not required in any other case/cases.

v. The bail bond if any, executed by the Accused shall stand discharged. The fine amount if any paid by the Accused shall be refunded to them.

(M.S., J.) **(R.S.V., J.)**

08.11.2023

Index: Yes
Neutral Citation: Yes
Internet: Yes
Speaking order

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To
1.The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.

2.The Fast Track Mahila Court,
Ramanathapuram.

3.The District Legal Service Authority,
Ramanathapuram.

4.The Superintendent,
Central Prison, Madurai.

5.The Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

jen

Pre-Delivery Judgment made
in
Crl.A.(MD) No.448 of 2021

08.11.2023