

Karthik Vs. State Represented by

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Court : Chennai

Decided On : Nov-27-2013

Judge : V.Dhanapalan

Appellant : Karthik

Respondent : State Represented by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

27. 11.2013 CORAM THE HONOURABLE MR.JUSTICE V.DHANAPALAN AND THE HONOURABLE MR.JUSTICE R.KARUPPIAH Criminal Appeal (MD) No.110 of 2012 Karthik S/o.Sathiyamurthy 5/15 Bharathi Nagar, Thennur, Trichy. ... Appellant Vs State Represented by Inspector of Police, Thiruverambur Police Station, Trichy District. Crime No.147/2011 ... Respondent PRAYER This Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in S.C.No.119 of 2011 dated 18.04.2012 on the file of the Principal Sessions Court, Trichy. !For Appellant ... Mr.T.Senthilkumar ^For Respondent ... Mr.K.S.Duraipandian (Additional Public Prosecutor) * * * * * :

JUDGMENT

(Judgment of the Court was delivered by R.KARUPPIAH, J.) The appellant who is the sole accused in S.C.No.119 of 2011, has filed this criminal appeal challenging the conviction and sentence imposed by the Principal Sessions Judge, Trichy,

dated 18.04.2012.

2. Heard Mr.T.Senthilkumar, learned counsel appearing for the appellant and Mr.K.S.Duraipandian, learned Additional Public Prosecutor, appearing for the respondent.

3. The sole appellant who is the accused in S.C.No.119/2011 stand convicted under Sections 302 and 404 IPC and sentence imposed to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for 6 months for the offence under Section 302 IPC and to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for 3 months for the offence under Section 404 IPC.

4. The case of the prosecution as per charge sheet filed by the respondent is that the deceased Yogeshwari, wife of one Anand had illicit intimacy with the appellant. The appellant resigned his job in a private company and searching for a new job and hence, he needs of money. The appellant demanded money from the deceased. Since the deceased refused to give money, the appellant schemed to kill the deceased and also to grab the jewels owned by her. With the intention of murder of the deceased, on 28.02.2011, at about 7 p.m., the appellant took a hammer and axa blade with him and went to Sanjeevi Nagar in his motor-cycle TN- 45-AK-5879 along with the deceased and parked the vehicle. When Yogeshwari walking ahead of him, the accused assaulted the deceased with hammer on her head and while she fell down unconsciously, the appellant cut her neck with the axa blade and caused her death. Thereafter, the appellant took the sim-card from her mobile phone and through it away and taken the mobile phone, a gold chain and one pair of gold stud owned by the deceased and thus, the appellant tried to cause disappearance of evidence of murder and hence the Investigating Officer filed the charge sheet against the appellant under Sections 302, 201 and 404 IPC.

5. The trial court considered the materials available on records and framed the charges against the appellant under Sections 302, 201 and 404 IPC and read over and explained to the appellant but the appellant pleaded not guilty. To prove the

case, the prosecution had examined 24 witnesses as PWs 1 to 24 on the side of prosecution 40 documents were marked as Exs.P1 to P40 and also produced 27 material objects as M.Os 1 to 27.

6. The facts of the prosecution case revealed from the evidence of the prosecution witnesses are as follows: The deceased Yogeshwari already married one Gopal but he was died within 1 or 2 months after the marriage. Thereafter, the deceased Yogeshwari married PW4, namely Anand and they are having two daughters. The appellant was working in Auto spare parts shop and he had illicit intimacy with the deceased Yogeshwari and PW4, husband of the deceased warned his wife. PW5, Gnanasekaran who is the brother of the deceased also warned the deceased.

7. On 28.02.2011, the deceased informed to her husband namely, PW4 that after taking treatment from the hospital, bring two children from tution centre and left the house but the deceased did not returned to her home till 8 p.m. Therefore, PW4, husband of the deceased informed through phone to his brother- in-law and mother-in-law namely Gnanasekaran and Thangamani and then brought the children from tution centre at 8 p.m, and all of them searching the deceased. On 01.03.2011, at 11 a.m., PW4 along with his relatives, went to Fort Police Station and lodged written complaint, Ex.P1 to PW.20 Sub-Inspector of Police and he registered a criminal case in Crime No.245/2011 as woman missing. Ex.P21 is the copy of FIR. PW20 Inspector of Police examined the witnesses namely PW4, Sakunthala, Subbiah, Rajeshwari, Thulasi, Raja and recorded their statements (But, the above statement of witnesses alleged to have recorded by PW20 are not produced by the prosecution in this case).

8. On 01.03.2011, PW3, namely one Madhavan, saw a female dead body with green colour churidhar, aged about 20 or 25 years at about 11.15 hours with blood injuries on the head and face and informed to his uncle Sundaram. PW2, namely Maruthairaj also saw a female dead body aged about 25 years at about 11.30 a.m., on 01.03.2011 in his land (i.e.) in S.No.55/1 with green colour churidhar, tops, gold stud, kolusu and chappal.

9. PW1, namely V.Pitchai was working as VAO incharge of Venkur Village and on 01.03.2011, he was in his office at about 11.15 a.m., and on information, he went

to the scene of occurrence i.e., PW2's land and saw a female dead body with the injuries. PW1 went to Thiruverumbur Police Station at 12 noon and lodged Ex.P1 written complaint to PW23, Sub-Inspector of Police namely, Udayakumar and PW23 registered a criminal case in Crime No.147/11 under Section 302 IPC and the FIR is Ex.P23. PW23 sent the express FIR through PW22, head constable namely Sekar at 1 p.m., and PW2 handed over the express FIR to the Magistrate Court at 4.10 p.m.

10. In the meantime, PW6, one Anguraj at about 7.30 to 8 p.m., on 28.02.2011, switched on his torch light and saw a female aged about 25 years and 10 feet behind the said female, one male was standing. On the next day, at 11 a.m., he saw the dead body of the same female. PW11, one Rakesh Sharma, on 28.02.2011 at about 7 p.m., when he was return to his house, he saw the appellant travelled in a motor bike along with the deceased Yogeshwari and also he identified MO.19 as the same bike. PW7 one Karthick was going towards a shop at about 9.30 a.m., the appellant came in a two wheeler and gave a white colour ladies money purse to him and appellant informed to PW7 that there was an accident and the purse was taken from that place and after enquiry, the purse may be handed over to the owner by next day. On his request, PW7 received the purse and handed over to his mother PW13, namely Saraswathi but PW13 scolded her son PW7 and she kept the purse in her house.

11. PW24, Investigating Officer namely Balamurugan received the copy of FIR at 1.30 p.m., on 01.03.2011 for investigation and went to the scene of occurrence and in the presence of witnesses, prepared Ex.P23 Observation Mahazar and Ex.P24 Rough sketch. At 3 p.m., PW24 conducted an inquest over the dead body in the presence of panchayatars and witnesses and prepared Ex.P25 inquest report. PW16, Assistant Director of Forensic Science Lab also seen the occurrence place. PW24, Investigating Officer recovered M.O.4 (series)-one pair of ladies chappal, M.O.12-blood stained straw, M.O.13-sample straw, M.O.14-blood stained soil and M.O.15-sample soil, M.O.16-blood stained green colour thread, M.O.17-white colour thread, M.O.18-white colour broken bangle pieces in the occurrence place under Ex.P4-seizure Mahazar and sent to Court under Ex.P26 Form 95. PW24 sent the body for post mortem through PW21, head

constable and then recorded the statement of the witnesses. At about 18.30 hours PW24 sent intimation to Inspector of Police, Fort Police Station wherein, woman missing case was registered. PW1, PW5 and one Thangamani identified the dead body in the hospital mortuary as that of Yogeshwari and recorded their statements. On 23.02.2011, the Investigating Officer gave Ex.P15 request for conducting post mortem. PW19-Doctor conducted the post mortem over the dead body of Yogeshwari and given Ex.P16-post mortem certificate and also received Ex.P19 Viscera report. PW24 obtained Ex.P17 final opinion from PW19-post mortem Doctor. PW17 scientific assistant received the blood sample along with Ex.P11 letter and obtained Ex.P10 blood report. PW21 head constable handed over M.O.1-Blood stained green colour Churidhar pant, M.O.2 - Blood stained green colour tops, M.O.3 - Blood stained green colour Shawl, M.O.23-bra, M.O.24-vest and M.O.25- Blood stained black hair band, taken from the deceased body to the Investigating Officer-PW24 and PW24 sent the MOs to the Court under Ex.P27. After post mortem, the head constable received MO.5-Gold nose ring, MO.6-one pair of gold stud, M.O.7-one pair of silver anklets, M.O.8- silver metti 4 Nos., M.O.26-safety pin and M.O.27-hair pin recovered from the dead body of the deceased and sent to Court Ex.P28 Form 95.

12. On 02.03.2011, at about 2 p.m., the appellant surrender before PW10, Village Administrative Officer, namely Jemeena Rani at Panayamkurichi Village Administrative Office and admitted the offence and given Ex.P29 extra judicial confession statement and also handed over M.O.19, Suzuki Motorcycle-TN-45-AK- 5879 and M.O.20, Helmet. PW10 along with her assistant namely David Raju handed over the appellant and also the above said MOs along with Ex.P29 confession statement and Ex.P30 special report at about 3.45 p.m., to the Investigating Officer, PW24. PW24 also examined the appellant and recorded another confession statement of the appellant in the presence of the same VAO and her assistant. From the admissible portion of the confession statement, i.e., Ex.P7, PW24 recovered M.O.21-hammer and M.O.22 Axa blade and sent to Court under Ex.P32 Form 95. At 19.00 hours, PW24 Investigating Officer, recovered MO.9 (series) of gold chain with one Thali, two kasu and two pottu and MO.10(series) of one pair of gold stud with drops and M.O.11-Samsung Cellphone from PW7, Karthick and obtained the appraiser's value report Ex.P34. On the

same day at 20.15 hours, the investigating officer returned to the police station with the appellant and altered the case under Sections 302 and 379 IPC and sent the alteration report Ex.P35 to the Court and examined witnesses and recorded their statements.

13. On 14.03.2011, PW24, Investigating Officer gave Ex.P36 requisition to the Chief Judicial Magistrate for recording statement under Section 164 Cr.P.C., from PW7 namely Karthick, PW18, Judicial Magistrate No.I, received Ex.P12 proceedings of the Chief Judicial Magistrate, Trichy and recorded Ex.P2 statement of PW7 under Section 164 Cr.P.C., on 21.03.2011 at 11.30 a.m. The Investigating Officer, received the chemical examination report and Serology report and then examined the witnesses and recorded their statements. After completion of the investigation, P.W.24, Investigating Officer filed a charge sheet against the appellant under Sections 302, 201 and 404 IPC.

14. The appellant was questioned by the trial court under Section 313 Cr.P.C., about the incriminating circumstances against the appellant in the evidence of prosecution witnesses, but the appellant denied the same as false. The appellant is also filed a written statement by stating that when he was travelling in his motor cycle along with PW7 Karthick through market, one Balu dashed the vehicle and thereafter, compromised the matter and the said balu left his purse and hence, they went to banana mandi of balu but he was not there. At that time, the appellant's wife informed that her grand mother was not well and hence, the appellant handed over the purse to PW7-Karthick and went away. On the next day, they handed over the purse to the police station at Fort Police Station, Trichy but the police falsly implicated in this case. But no defence witness examined on the side of the appellant.

15. The trial court has considered the above said evidence adduced on the side of the prosecution and finally held that the prosecution has proved the offences committed by the appellant under Sections 302 and 404 IPC and convicted and sentenced the appellant as already stated. But, the trial court has held that the prosecution has failed to prove the charge under Section 201 IPC by adducing reliable evidence and acquitted the appellant from the above said charge.

16. Aggrieved over the above said conviction and sentence imposed by the trial court, the appellant, who is sole accused in the sessions case preferred this criminal appeal.

17. Point for consideration in this appeal is that ".Whether the conviction and sentence imposed by the trial court are correct as contended by prosecution side or this criminal appeal is to be allowed as contended by the appellant ?."

18. The learned counsel appearing for the appellant mainly contended that admittedly, no direct eye-witness to prove the occurrence and the prosecution relied upon only in the circumstantial evidences but the prosecution has miserably failed to prove all the alleged circumstances to implicate the appellant in the crime. The learned counsel further submitted that the trial court has not at all properly considered various material contradictions in the oral evidence of prosecution witnesses and the alleged statements recorded by the investigating officer. Further, the learned counsel for the appellant pointed out that the prosecution failed to remove all the suspicious circumstances and proved the prosecution case beyond reasonable doubt and therefore, prayed for setting aside the conviction and sentences imposed by the trial court.

19. Per contra, the learned Additional Public Prosecutor would submit that even though no direct eye-witness to prove the occurrence but the prosecution has examined several witnesses to prove the alleged motive and also examined witnesses as last seen the appellant together with the deceased. Further, on the basis of confession statement given by the appellant, the weapons and material objects were recovered and the above said arrest, confession and recovery also proved by reliable witnesses on the side of the prosecution and the trial court has correctly discussed about the oral and documentary evidence and rightly convicted and imposed sentence and therefore, there is no need to interfere with the findings of the trial court.

20. Admittedly, in this case, no direct eye-witness to prove the offences alleged to have committed by the appellant. Therefore, the prosecution relied upon only the circumstantial evidence to implicate the appellant in the crime. In the above said circumstances, the settled principle of law laid down by the Hon'ble Apex Court is

that, it is the duty of the prosecution to prove each one of the circumstances independently and all the circumstances so proved must be unerring points towards guilty of the accused and if any link in the chain of circumstances is broken, then the benefit goes to the accused.

21. In the instant case, the prosecution relied on the following circumstances to implicate the appellant in the crime:- 1. The motive alleged by the prosecution is that the appellant had illicit intimacy with the deceased and the appellant demanded money from the deceased for searching of his new job since the deceased refused to give money, with intention, the appellant murdered the deceased.

2. The prosecution relied on the evidence of PW6 and PW11 as witnesses last seen the appellant and the deceased together prior to the occurrence.

3. Medical evidence.

4. Extra Judicial confession statements given by the appellant before PW10-VAO and also before Investigating Officer PW24 and recovery of material objects on the basis of admissible portion of the confession statements given by the appellant.

22. According to the prosecution, the motive for the occurrence is that the deceased namely, Yogeshwari had illicit intimacy with the appellant and the appellant demanded money from the deceased for searching a new job, since the deceased refused to give money, the appellant murdered the deceased with hammer and axa blade and caused her death and taken the Cellphone, gold chain and studs and thus, committed the offences.

23. On the side of the prosecution examined PW9 namely one Thulasi as sole independent witness to prove the alleged motive (i.e.,) the appellant had illicit intimacy with the deceased and also to prove the appellant used to demand money from the deceased for searching a new job, since the deceased refused to give money, the appellant murdered the deceased. But, the above said PW9, the sole independent witness examined to prove about the said motive has not support the prosecution and turned hostile.

24. PW4 namely, Anand, who is husband of the deceased and PW5, Gnanasekaran, who is brother of the deceased examined by the prosecution to prove the illicit intimacy of the deceased with the appellant. PW4 clearly deposed as only from PW9, Thulasi, he came to know about the illicit intimacy of the appellant with the deceased and demand of money. But, PW9 has turned hostile and not supported the prosecution. Therefore, PW4 is only hearsay evidence. But, for the first time at the time of cross-examination, PW4 has deposed as if, 3 months prior to the occurrence, he saw the appellant talking with the deceased. On perusal of records revealed that the above said witness has not stated the above said facts before the Investigating Officer or in the complaint given to the police or at the time of chief examination. Therefore, the above said oral testimony of PW4 is unbelievable, unreliable and contradictory.

25. PW5, brother of the deceased has deposed as PW4, husband of the deceased alone informed to him, as the appellant frequently talked with the deceased through phone and therefore, they warned the deceased. PW5 has not deposed anything about the demand of money by the appellant from the deceased. Therefore, PW5 evidence also only a hearsay evidence regarding the above said alleged motive. Further, at the time of evidence before court, PW5 brother of the deceased deposed as he alone written the complaint given by PW4 to the police and in the complaint, he has written about the illicit intimacy of the appellant with the deceased. But, a perusal of Ex.P1 complaint given by PW4 on 28.02.2011 in Cr.No.245/11 alleged to have written by PW5 revealed that it is not stated as the appellant had illicit intimacy with the appellant and therefore, the oral testimony of PW5 is absolutely false. Further, in the above said Ex.P1 complaint given by PW4, husband of the deceased, not even mentioned about the appellant and only the complaint given as his wife was missing from 28.02.2011, 7 p.m. Therefore, except the above said oral interested testimonies of PW4 and PW5, no other witnesses to prove the allegation that the appellant had illicit intimacy with the deceased and the appellant demanded money for searching his new job from the deceased. Therefore, the prosecution has miserably failed to prove the alleged motive for the occurrence, as rightly pointed out by the learned counsel for the appellant.

26. The second circumstance relied on by the prosecution to implicate the appellant is that by examining PWs 6 and 11, namely Anguraj and Rakesh Sharma lastly seen the appellant with the deceased together. A perusal of oral testimony of PW6 Anguraj revealed that at the time of chief examination, he deposed as if he saw a female standing nearby one marudairaj land and one male was also standing there and also he saw a two wheeler parked on the path way. But, at the time of cross-examination, he admitted that only on a presumption, he deposed as the deceased may standing nearby pathway on previous day. Further, there are various discrepancies in the statement and oral evidence. Therefore, the above said oral evidence of PW6 has not at all helpful to the prosecution to prove its case since he has deposed only on presumption as admitted by him. The other witness PW11 one Rakesh Sharma deposed as on 28.02.2011 at about 7 p.m., he saw the appellant riding a motor cycle with the deceased as a pillion rider. A perusal of the entire oral evidence of the witness, particularly in the chief examination revealed that he has not at all seen the appellant and the deceased. Admittedly, investigation by police commenced from next day (i.e.,) 01.03.2011 onwards, but the above said witness deposed as the Police examined him only after two days. The witness has also admitted that he has not informed the colour of the dress of the appellant and also the colour of the vehicle. Further, he admitted that only he saw the vehicle before the Court for the first time after the occurrence and he has not given the vehicle number to the Police. Further, he deposed as he has no connection with the deceased and the appellant and he has not informed to anybody except the police. The learned counsel appearing for the appellant would submit that there are various material discrepancies in the oral evidence PW11 before the court and the statement recorded by the Investigating Officer under Section 161 Cr.P.C. On careful reading of the oral evidence before court and statement given under Sections 161 clearly proved that the above said PW11 evidence is unbelievable, unreliable and also contradictory. Therefore, the above said oral evidence both PW6 and PW11 are not helpful to the prosecution. In view of the above said reasons, the second circumstance relied on by the prosecution to implicate the appellant in this crime is also not proved as rightly pointed out by the learned counsel for the appellant.

27. The third circumstance relied on by the prosecution is medical evidences (i.e.), oral evidence of PW19 post mortem Doctor, Ex.P16 post mortem certificate, Ex.P17 final opinion of PW19, Ex.P18 Serology report, Ex.P19 Viscera report and Ex.P20 Microbiological report. As rightly pointed out by the learned counsel appearing for the appellant, the medical evidence adduced on the side of prosecution is not supported the prosecution case and it is against the case of the prosecution and therefore, the medical evidence adduced on the side of the prosecution itself proved as false case. On the side of prosecution, PW19 post mortem Doctor has deposed before the trial court and also given Ex.P16 post mortem certificate and Ex.P17 final opinion regarding cause of death etc. In the post mortem certificate, PW19 post mortem Doctor has given the details of wounds, found on the body of the deceased as follows: ".1. An oblique cut wound, 5 cm x 3 cm x bone deep, on the right occipital region scalp.

2. An oblique cut wound, 5 cm x 2 cm x brain deep, on the right temporal region of the scalp.

3. A curved cut wound, 3 cm x 2 cm x bone deep, 2 cm above the 2nd wound, on the temporal region.

4. A transverse cut wound, 5 cm x 2 cm x bone deep, on the right parietal region of the scalp.

5. A vertical cut wound, 1 cm x 1 cm x bone deep, on the right parietal region of scalp.

6. A vertical cut wound, 3 cm x 1 cm x bone deep, on the right parietal region of scalp, 1 cm above the 5th wound.

7. A vertical cut wound, 4 cm x 2 cm x bone deep, on the vertex.

8. A vertical cut wound, 4 cm x 2 cm x bone deep, on the right frontal region of scalp.

9. A vertical cut wound, 2 cm x 1 cm x bone deep, on the right frontal region of the scalp, 3 cm inner to the 8th wound.

10. A vertical cut wound, 3 cm x 2 cm x bone deep, on the right side of the forehead.
11. An oblique cut wound, 4 cm x 3 cm x bone deep, on the right side of forehead, 1 cm inner to the 10th wound.
12. 5 multiple cut wounds, of varying dimensions, on the centre of frontal region of scalp.
13. A vertical cut wound, 2 cm x 1 cm x bone deep, on the left parietal region of the scalp.
14. A vertical cut wound, 1 cm x 1 cm x bone deep, on the left frontal region of the scalp.
15. An incised wound, 5 cm x 3 cm x muscle deep, on the back of left side of neck.
16. A transverse incised wound, 6 cm x 3 cm x muscle deep, on the front of left side of heel.
17. A transverse cut wound 6 cm x 0.5 cm x muscle deep, on the front of centre of neck.
18. A transverse incised wound, 12 cm x 2 cm x muscle deep, on the front, back of right side of neck.
19. A vertical 2 cm x 2 cm x bone deep, in front of right ear.
20. A cut wound 2 cm x 1 cm x through and through, on the pinna of right ear.
21. Multiple linear abrasions of varying lengths on the front both sides of neck, front of both side of chest.
22. A transverse cut wound, 1 cm x 1 cm x muscle deep, on the back of right middle finger.
23. Bruising of frontal, parietal, right temporal, right side of occipital regions of scalp and right temporalis muscle-Dark red, Comminuted fracture of right

temporal, right side of occipital bones present. Fissured fracture of right temporal, right parietal and right frontal bones present.

24. Sub dural haemorrhage and Sub arachnoid haemorrhage on both cerebral and cerebellar hemispheres.

25. Fracture base of skull-anterior, middle and posterior cranial fossae present." and 28. Ex.P17 Doctor's Final Opinion stated as follows: ".The deceased would appear to have died of ".DIED OF SHOCK AND HAEMORRHAGE DUE TO MULTIPLE CUT WOUNDS". Viscera report: Alcohol or other poison was not detected."

29. Further, at the time of oral evidence before the trial court, PW19- post mortem Doctor has clearly admitted as follows:- ".gpnuj ghpnrhjid mwpf;ifapy; ehd; Fwpg;gpl;l fha';fs; vd;dplk; fh;l;lg;gLk; (r/bgh/21 kw;Wk; 22) Ma[j]';fshy; Vw;gl tha;;g;gpy;iy/".

30. A careful perusal of the wounds found by the post mortem Doctor in the body of the deceased and the opinion given by PW19, post mortem Doctor clearly proved that the above said wounds found in the body of the deceased could not be caused by the alleged weapons namely M.O.21 Hammer and M.O.22 Axa blade. Apart from the opinion of the post mortem Doctor, a careful perusal of various cut injuries found on the body of the deceased would reveal that the above said wounds could not be caused by the alleged weapons M.O.21, Hammer and M.O.22 Axa blade. On the side of the prosecution has not treated the above said PW19 post mortem Doctor as hostile witness. The prosecution has not examined any other expert or doctor to prove that the opinion of PW19 post mortem Doctor is not correct. Therefore, from the above said post mortem Doctor's evidence itself falsify the case of the prosecution, as rightly pointed out by the learned counsel for the appellant.

31. As already stated, no direct eye-witness to prove the occurrence and the prosecution case is rest upon only the circumstantial evidence. In the above said circumstances, the medical evidence is more relevant to decide the case. In this case, as already discussed, the medical evidence is completely against the

prosecution version and therefore, the above said third circumstance relied on the prosecution also not proved.

32. The 4th circumstantial evidence relied on by the prosecution to implicate the appellant is that the appellant himself surrendered before PW10- VAO and gave Ex.P29 extra judicial confession statement and also handed over M.O.19 motor cycle and M.O.20 Helmet to him and then, the V.A.O. Recorded the statement and then handed over the appellant and the above said MOs to the Investigating Officer along with confession statement with Ex.P30 report. In the police station, PW24-Investigating Officer also examined the accused and recorded another confession statement and in the admissible portion of the confession statement recorded by Investigating Officer, recovered material objects from various places. As rightly pointed out by the learned counsel for the appellant, the alleged occurrences took place on 28.02.2011, the original complaint given by PW4, husband of the deceased on 01.03.2011, at 11 a.m., and registered FIR Ex.P21 as woman missing. According to the prosecution, PW3 one Madhavan saw a dead body of a female on 01.03.2011 at about 11.15 a.m., and he informed to his uncle namely Sundaram. The above said Sundaram informed to PW1- VAO, namely V.Pitchai, who was incharge of Venkur Village. PW1 went to the place of occurrence and saw the dead body and then at 12 noon, he went to Thiruverumbur Police Station and lodged Ex.P1 complaint and registered Ex.P23 FIR and PW24 Investigating Officer received the copy of FIR on 01.03.2011 at 1.30 p.m., and immediately commenced the investigation. Therefore, the above said surrender of the appellant before PW10, VAO and recording of the alleged Ex.P29 extra judicial confession statement recorded only during the pendency of investigation by PW24, Investigating Officer. As rightly pointed out by the learned counsel for the appellant, the above said confession statement alleged to have recorded by PW10 is not valid, since it is recorded during the pendency of police investigation. Further, there are many contradictions regarding surrender of the appellant before VAO and recovery of material objects.

33. According to the prosecution on 02.03.2011, at 2 p.m., while PW10, was in his office, the appellant came there and surrendered before PW10-VAO and gave Ex.P29 confession statement and handed over M.O.19 Suzuki vehicle Reg.No.TN-

45- AK-5879 and also M.O.20 - Helmet and PW10 produced the appellant and MOs to PW24, Investigating Officer along with Ex.P29 and Ex.P30. But, PW10 herself admitted in her evidence that as per rules, during pendency of police investigation, extra judicial confession of accused cannot be recorded. Therefore, the evidence of PW10 itself revealed that the alleged Ex.P29 extra judicial confession statement recorded by PW10-VAO, during the pendency of Police investigation is illegal. Further, the case of the prosecution itself shows that after recording of Ex.P29 confession statement by PW10-VAO, another confession statement also recorded by PW24-Investigating Officer and on the basis of admissible portion in the second confession statement, MOs were recovered. As rightly pointed out by the learned counsel for the appellant, the above said alleged two confession statements given before PW10 and PW24 are not at all proved by reliable evidence and also not in accordance with law.

34. Further, the alleged recovery of material objects on the basis of confession statements given by the appellants are also not proved as true since there are several contradictions in the evidence of witnesses. According to prosecution, on the basis of confession statement, the Police Officials along with the appellant went to PW7, namely Karthick's house and recovered one money purse (it is not produced in this case), M.O.9 (series) a Gold chain with one Thali, two Kasus and two Pottus, MO.10 (series) one pair of gold stud with drops. PW7 deposed in his chief examination as if, the above said material objects recovered ".on 02.03.2011, at about 2 p.m.". but the same witness i.e., PW7 deposed at the time of cross-examination as ".on 28.02.2011, at about 9.30 p.m., the police came to his house and recovered the above said material objects".. PW13, mother of PW7 namely Saraswathi has deposed as ".on 28.02.2011, at about 9 p.m., her son namely PW7 gave a purse to her and next day i.e., on 01.03.2011 at 7 a.m., Police came to her house and taken the material objects namely, Thali chain and Cell phone and purse".. According to the Investigating Officer, PW24 the above said MOs recovered only on 02.03.2011 at 18 hrs. Therefore, on careful perusal of oral evidence of PWs 7, 10, 13 and 24 revealed that there are material contradictions in date, time and details of MOs alleged to have recovered on the basis of confession statements. Further, as rightly pointed out by the learned counsel for the appellant, in the earlier complaint given by PW4, the details of jewels, purse

and other MOs are not stated. PW10, VAO deposed as MO.20, helmet belongs to the appellant's friend but the above said owner of the helmet was not examined by Investigating Officer and also not examined as witness. Further, if really the appellant riding his motor cycle with helmet, the alleged witness PW11, Rakesh Sharma could not see the appellant. But, the above said PW11, Rakesh Sharma has not deposed as the appellant riding the motor cycle with helmet. From the above said discrepancies in the oral and documentary evidence, it is clear that the case of the prosecution regarding confession, arrest and recovery of MOs are all not proved by reliable oral evidence as rightly pointed out by the learned counsel appearing for the appellant. Therefore, the above said fourth circumstance also not proved by prosecution beyond reasonable doubt.

35. A careful reading of the judgment of the trial court revealed that the trial court has not at all considered the lot of infirmities and material contradictions in the oral and documentary evidence adduced on the side of prosecution. The trial court failed to consider the fact that absolutely there is no reliable evidence to prove the alleged motive and the witnesses examined by the prosecution to prove the motive are contradictory with each other and also against the alleged 161 Cr.P.C., statements given by them. Further, the trial court has not properly considered the oral evidence of PW6 and PW11, who were examined as last seen the appellant and the deceased together. As already discussed, the oral evidence of PW6 and PW11 are unbelievable and contradictory and further falsify the prosecution case. The trial court also failed to consider the settled legal proposition is that in a case rests on only circumstantial evidence, the medical evidence is vital role to decide the case and therefore, the observation and finding of the trial court is that the opinion of the post mortem Doctor-PW19 (i.e.,) there is no possibility of causing injuries on the body of the deceased will not affect the prosecution case cannot be accepted. The learned Additional Public Prosecutor has not suggested at the time of evidence of PW19 Doctor as she has falsely deposed. Further, the prosecution has not examined any other Doctor to prove the fact that the opinion of PW19 Doctor is not correct. The trial court has also failed to consider properly the nature of injuries, the weapons alleged to have used by the appellant and opinion of post mortem Doctor. Therefore, as rightly pointed out by the learned counsel for the appellant, the prosecution case contains lot of infirmities and the medical evidence

also not supported the case of the prosecution.

36. In view of the above said discussion, the prosecution has miserably failed to prove any one of the circumstances beyond reasonable doubt to implicate the appellant in the crime by reliable oral and documentary evidence and the benefit of doubt is to be given to the appellant. Therefore, the conviction and sentences imposed by the trial court are to be set aside and the appellant is to be acquitted and the appeal is to be allowed accordingly.

37. In the result, this Criminal Appeal is allowed and the conviction and sentences imposed on the appellant by judgment dated 18.04.2012, passed in S.C.No.119 of 2011, by the trial court, Trichirapalli, are set aside and the appellant is acquitted from all the charges levelled against him. Fine amount, if any, paid by the appellant shall be refunded to him. Accordingly, the appellant is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case. RR/ssn To 1. The Principal Sessions Judge, Trichy District.

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

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