

Deni Alias Senthilkumar Vs. State Represented by the Inspector of Police

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Court : Chennai

Decided On : Mar-09-2012

Judge : N.Paul Vasanthakumar; P.Devadass, Jj.

Appeal No. : Criminal Appeal (MD) No.41 of 2011

Appellant : Deni Alias Senthilkumar.

Respondent : State Represented by the Inspector of Police.

Advocate for Def. : Mr.K.S.Duraipandian, Adv.

Advocate for Pet/Ap. : Mr.T.A.Punithan, Adv.

Judgement :

JUDGMENT

P.DEVADASS,J.

1. The accused in Sessions Case No.33 of 2010 before the Sessions Judge, Karur, who was convicted under Section 302 I.P.C. and sentenced to life and fined Rs.1,000/- with default sentence is the appellant.

2. The prosecution case as told in the Sessions Court may be stated in brief as under:

(1) Deceased Palaniammal @ Dhanammal married Thangaraj. P.Ws.6 and 3 Loganathan and Kannan are their sons. Due to difference of opinion, the spouses separated. She lived in her mother's house in Chinna Kullathurpatti, Paganatham Village in Karur District. Thangaraj is residing somewhere.

(2) P.Ws.6 and 3 studied in certain colleges in Trichirappalli. Palaniammal was employed in Karur Tex. She also did finance and lend money on jewels.

(3) Once, accused Senthilkumar brought Palaniammal in his motor cycle and left her in her house. P.W.3 had seen this. Palaniammal used to wear gold chains, bangles and ear-stud. As she did not wear the chains, P.W.6 asked about it. She told him that she gave them to the accused and promised him to get it from him.

(4) Thangaraj met the educational expenses of his sons. Palaniammal did not give any money to the family. Her sons told her to remain in house.

(5) On 09.03.2009, evening, P.W.2 Periasamy, Palaniammal's cousin brother and P.W.3 have seen her in town bus No.14. But, till late night, she did not return home.

(6) On 10.03.2009, morning, Anbarasan, Village Assistant, Kakavadi Village reported P.W.1 Subbulakshmi, V.A.O., in charge of Kakkavadi Village that near Kullampatti Branch Road, on the way to Vaiyampatti, between two boulders, a woman's dead body was found. P.W.1 went there. Seen the dead body of Palaniammal with head injuries.

(7) At about 11 a.m., at the Velliyanai police station, P.W.1 gave Ex.P.1 complaint to P.W.14 Selvi, Sub-Inspector. She registered a case in crime No.46 of 2009 under Section 302 I.P.C. She sent the express F.I.R. (Ex.P.29) to Judicial Magistrate, Karur through P.W.13, Dharmaraj, Head Constable.

(8) P.W.17, Uthayakumar, Inspector, Pasupathi-palayam took up investigation. Around 12 noon, he visited the scene place. In the presence of P.W.4 Boopathi, President, Kakkavadi Panchayat and Ganesan, P.W.17 prepared Ex.P.3 Observation Mahazar and drew Ex.P.5 Rough Sketch. In their presence, from the scene place, he recovered a covering chain (M.O.1), a covering ear-stud (M.O.2),

a pair of hair pins (M.O.5), a black colour shirt button (M.O.6), a pair of ladies chappal (M.O.7), blood stained sand (M.O.8) and plain-sand (M.O.9) under Ex.P.4 mahazar. He produced the case-properties under Form 95 (Ex.P.41) to the court. In the presence of Panchayatars, P.W.17 held inquest over the dead body (Ex.P.42 Inquest Report). He sent the dead body through P.W.12 Head Constable Mani with his requisition (Ex.P.14) to Government Hospital, Karur, for autopsy. He examined the witnesses and recorded their statements.

(9) At about 5.15 p.m., at the Government Head Quarters Hospital, Karur, P.W.9 Dr.Mythili conducted postmortem on the dead body of Palaniammal and noticed the following:

- 1) Cut injury 2 x 2cm above right eye.
- 2) Abrasion over centre of forehead 2 x 2cm.
- 3) Abrasion right cheek 2 x 2cm.
- 4) Abrasion below right ear 2 x 2cm.
- 5) Abrasion right elbow 2 x 2cm.
- 6) Abrasion 1 x 1cm over left elbow.
- 7) Abrasion over left shoulder 2 x 2cm.
- 8) Abrasion right knee 2 x 3cm.
- 9) Cut injury over left parietal region 1 x 2 cm.

(10) After postmortem, P.W.12 Mani, Head Constable recovered jacket (M.O.13), Sari (M.O.14) and Inskirt (M.O.15) from the dead body and produced them to P.W.17 with his special report Ex.P.27. P.W.17 received them and produced them to the court under Form 95 (Ex.P.28).

(11) On 19.03.2009, when the house was cleaned, P.W.6 found Ex.P.6 series letter of his mother. He handed over it to P.W.17.

(12) On 20.03.2009, at about 7 a.m., when P.W.7 Kottaiyappan, V.A.O. North Narasimmapuram and his Assistant were in their office, the accused appeared before them. He confessed to P.W.7 about the killing of Palaniammal @ Dhanammal on 09.03.2009 and stated that he knew police is searching for him and if he is caught by them, they will harass him, so, he has surrendered before him. P.W.7 wrote down his extra-judicial confession (Ex.P.8). Since the murder has taken place within Kakavadi limits V.A.O., P.W.7 informed the V.A.O. of Kakavadi P.W.8 Samiyappan.

(13) At about 9 a.m., at the Pasupathipalayam police station, P.W.7 and his Assistant Chelladurai produced the accused to P.W.17 with Ex.P.8 with his endorsement. P.W.17 arrested him.

(14) In the presence of P.W.8 and his Assistant Anbarasan, accused gave Ex.P.43 confessional statement. P.W.17 recorded it. The accused (Ex.P.10) signed it. P.W.8 and his Assistant have attested it (Ex.P.9). In pursuance of that, the accused took them to Kullampatti Branch Road and shown them a blood stained big stone (M.O.10). P.W.17 seized it under Ex.P.11 mahazar. Thereafter, the accused took them to his house and produced his black colour T-Shirt (M.O.11), two gold chains weighing 2 and 2 1/4 sovereigns respectively (M.Os.3 and 4). P.W.17 seized them under Ex.P.12 mahazar. Then, the accused took them to R.S.K. Cycle and Bike Stand in Karur - Coimbatore Road and shown them a black colour Bajaj Platinum Motor Cycle TN-47-Q-3821 (M.O.12). P.W.17 seized it under Ex.P.13 mahazar. P.W.17 brought the accused to the police station and sent him to court for custody. He produced the case-properties to court under Form 95 [Exs.P.44 to 46].

(15) On 21.03.2009, at about 5 p.m., at the Pasupathipalayam police station, P.W.2 handed over Ex.P.2 series accounts in the handwriting of his late sister Palaniammal to P.W.17, who received them under mahazar. (16) P.W.17 sent Exs.P.19 to 20 and 26 to the court to send the case- properties to lab. He sent Ex.P.47 letter to send Exs.P.2 and P.6 handwritings to Documents Expert. Under Ex.P.24, court sent those documents to the Document Division of Regional Forensic Laboratory, Madurai.

(17) P.W.15 Premkumar, Accountant, Dhanalakshmi Pawnbroker shop, Karur, knows the accused. According to him, several times, accused pledged jewels with them. On 01.07.2008, under Ex.P.30, accused had pledged 2 sovereigns of gold chain (M.O.3) for Rs.17,000/-. On 03.07.2008, he had redeemed it. On 19.02.2009, under Ex.P.31, he had pledged 2 1/2 sovereigns of gold chain (M.O.4) for Rs.10,000/-. On 21.02.2009, he redeemed it and again pledged it under Ex.P.32 for Rs.12,000/- and redeemed it on 23.02.2009.

(18) On transfer of P.W.17, P.W.18 Mohandoss, Inspector continued the investigation.

(19) P.W.16 Vasanthasundari, Scientific Officer, Grade I, examined the handwritings in Exs.P.2 and P.7. She gave the markings Q1 to Q8 (Exs.P.33 to 36) to various parts of Ex.P.6 letter and gave the marking A.1 to A.9 (Ex.P.37) to Ex.P.2 diary entries and compared them. She opined that 'A1 to A9' and 'Q1 to Q8' have all been written by one and the same person. (Ex.P.38 Report and Ex.P.39 Reasoning Sheet).

(20) P.W.9 opined that the head injury on the deceased could have been possible by hitting her head with a big stone like M.O.10 and also opined that the deceased would appear to have died of shock and haemorrhage due to head injury.

(21) Concluding the investigation, P.W.18 filed the Final Report for an offence under Section 302 IPC.

3. In the trial Court, the accused has been tried for a charge under Section 302 IPC.

4. To sustain the charge, prosecution examined P.Ws.1 to 18, marked Exs.P.1 to P.47 and exhibited M.Os.1 to 15.

5. On the incriminating aspects in the prosecution evidence, the accused has been examined. He denied his complicity in this case. He did not produce any evidence.

6. Analysing the above evidence, the learned Sessions Judge, Karur held that the several incriminating circumstances projected as against the accused have been

established and they form a complete chain unerringly proceeding towards the accused, thus, found him guilty under Section 302 I.P.C. and sentenced him to life with fine and with default sentence.

7. According to Mr.T.A.Punithan, learned counsel for the accused, none of the circumstances projected against the accused have been established. There are several missing links. They do not form a complete chain proceeding towards the accused and there exists hypothesis of innocence in favour of the accused.

8. Elaborating his submissions, the learned counsel submitted as under:

(1) P.W.1, V.A.O. had stated that Ex.P.1 has been attested by Anbarasan, the Village Assistant. However, there is no such attestation in Ex.P.1. So, Ex.P.1 is not the real complaint. The true complaint has been suppressed.

(2) There was delay in lodging the F.I.R. and despatching it to the court. So, the F.I.R. is doubtful.

(3) P.Ws.3 and 6 have admitted that many people came to their house and demanded money and jewels from their mother. So, some of the aggrieved persons might have killed her. However, the accused has been blamed for this. (4) P.W.3 did not say when he had seen his mother and the accused together in a motor-cycle.

(5) There was no signature in the alleged Ex.P.2 and Ex.P.7 hand writings of the deceased. They were not seized in the presence of witnesses. They were not properly seized. They are concocted and created for the occasion by P.Ws.2 and 6. They were not proved as per Section 67 of the Indian Evidence Act, 1872.

(6) The documents produced by P.Ws.2 and 6 are not in the handwritings of the deceased. So, the report of the Document Expert Ex.P.38 cannot be relied on.

(7) The motive for the alleged commission of the offence is intimidation of the deceased since the accused had not returned her jewels. Accused had not redeemed them. If that is so, it is quite strange how it could be seized from his house.

(8) P.W.7 V.A.O. is a stranger to the accused. Ex.P.8 extra-judicial confession is not voluntary and genuine. While the accused was examined under Section 313 Cr.P.C., he had retracted it. The ink in the signature differs.

(9) P.W.8 stated that the confessional statement was recorded in writing by P.W.17, but, it is in computer typing.

(10) It is quite unbelievable that after 11 days of the occurrence, from the very same scene place M.O.10 big stone has been recovered.

(11) In support of his submissions, the learned counsel for the accused submitted the following rulings:

(i) BALWINDER SINGH Vs. STATE OF PANJAB

[AIR 1996 SC 607].

(ii) S.GOPAL REDDY Vs. STATE OF ANDHRA PRADESH

[AIR 1996 SC 2184].

(iii) SURINDER KUMAR Vs. STATE OF PUNJAB

[AIR 1999 SC 215].

(iv) TIPPARAM PRABHAKAR Vs. STATE OF ANDHRA PRADESH [JT 2009 (6) SC 205].

(v) PANCHO Vs. STATE OF HARYANA

[2011 STPL (Web) 929 SC]

(vi) S. ARUL RAJA Vs. STATE OF TAMIL NADU

[2010 (3) SCC (CrI) 801]

(vii) VINOD SOLANKI Vs. UNION OF INDIA

[JT 2009 (1) SC 1]

(viii) SELVI & ORS. Vs. STATE OF KARNATAKA & ANR. [AIR 2010 SC 1974]

9. On the other hand, the learned Additional Public Prosecutor submitted as under:

(1) The accused had link with the deceased. He had received money and jewels from her. When he refused to return them, she had threatened to expose him to his parents and to police. In the circumstances, he took the deceased to a lonely place and killed her by smashing her head with M.O.10 big stone. (2) There are several incriminating circumstances, such as last seen theory; deceased, while alive wrote that the accused had threatened to kill her; extra-judicial confession; Section 27 Evidence Act recovery; and Medical evidence. All goes to show that the accused is the person, who has killed the deceased.

(3) The prosecution has proved its case beyond all reasonable doubts, thus, the accused has been rightly sentenced.

10. We have given our deep consideration to the rival submissions. We have scanned the recorded evidence and also perused the various decisions cited at the bar.

11. Palaniammal @ Dhanammal was married to Thangaraj. Loganathan (P.W.6) and Kannan (P.W.3) are their sons. During 2009, P.W.6 studied M.Sc. in a college in Tiruchirappalli and he used to visit his house in the week ends. P.W.3 studied for a degree course in a college in Tiruchirappalli. He went to the college daily from his house. Due to difference of opinion, Palaniammal got separated from her husband. Her husband is living somewhere. She lived in her mother's house in Chinnakulathupatti, Paganatham in Karur Taluk.

12. On 10.03.2009 morning, in a hilly like secluded area, situate near vaiyampatti road, near Kullampatti Branch Road, abutting Madurai - Salem National High Ways, the dead body of Palaniammal was found with head injuries.

13. The postmortem findings of P.W.9 Dr.Mythili shows that she died of shock and haemorrhage due to head injury. The medical evidence shows that she died of homicidal violence.

14. Who is responsible for her death?

15. According to the prosecution, in a chance meeting in Karur, the accused met her, though there is vast age gap between them, namely, 23 and 44 years old, they were in illegal intimacy, she gave him money and jewels, later quarrel arose between them since he had refused to give back her money and her gold chains, she had threatened to expose him to his parents and also to the police, in the circumstances, he had planned to silence her permanently, so, on 09.03.2009, night, at a secluded place, killed her.

16. There is no eyewitness to the occurrence. This case is based on circumstantial evidence.

17. In *Padala Veera Reddy v. State of A.P.* (AIR 1990 SC - 79), 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.

18. In *SK.YUSUF Vs. STATE OF WEST BENGAL* [2011 (3) SCC (Cri) 620], on the aspect of circumstantial evidence, Hon'ble Apex Court observed as under:- 32. Undoubtedly, conviction can be based solely on circumstantial evidence. However, the Court must bear in mind while deciding the case involving the commission of serious offence based on circumstantial evidence that the prosecution case must

stand or fall on its own legs and cannot derive any strength from the weakness of the defence case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. 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 that the act must have been done by the accused.

19. In NAVARASU murder case [INSPECTOR OF POLICE, TAMIL NADU Vs. JOHN DAVID, 2011 (3) CTC 104], the Hon'ble Apex Court laid down the following guidelines in considering the circumstantial evidence produced by the prosecution:

19. The principle for basing a conviction on the edifice of circumstantial evidence has also been indicated in a number of decisions of this Court and the law is well-settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion that could be drawn is the guilt of the Accused and that no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the Accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the Accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof. It has been indicated by this Court that there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions.

20. To nail the accused prosecution relies on the following circumstances:

(1) Motive.

(2) Accused and the deceased were seen together.

(3) Extra-judicial confession of the accused.

(4) Section 27 Evidence Act recovery.

(5) Written declaration of the deceased.

(6) Medical evidence.

21. P.W.3 Kannan, second son of deceased Palaniammal, in his evidence stated that once the accused brought his mother in his motor cycle to their house. When he asked her who he is, she told him that he is an acquaintance of her.

22. The educational expenses of P.Ws.3 and P.W.6 were met by their father. This is evident from the evidence of their paternal uncle P.W.2 Periasamy and P.Ws.3 and 6. Palaniammal worked in Karur Tex in Karur and she was also an agent in a finance firm. It is the evidence of P.Ws.3 and 6 that she did not give any money to the family.

23. P.W.6 stated that his mother used to wear two gold chains, gold ear- stud and bangles, when she was not wearing her gold chains, he asked her about them, she told him that she gave them to the accused and she will get them from him. Both P.Ws.3 and 6 told her not to go for job and remain in the house. But, she did not heed to their words.

24. Thus, the accused was seen with the deceased. He also brought her to her house in his motor cycle. There was money dealing between both. He had also got her gold chains, but not returned them. So, there were prior acquaintance as between the accused and the deceased. It is clear that the accused is a known person to her.

25. On 09.03.2009, at about 3 p.m., P.Ws.2 and 3 seen Palaniammal sitting behind the driver's seat in Town Bus No.14. Thereafter, till late evening, she did not return home. They thought that she might have stayed in any one of their

relatives' house.

26. On the next day morning, at about 9 a.m., in a secluded place, in a small hilly like place, in Vaiyampatti road, near Madurai - Salem NH Road, her dead body was found with head injuries and there were abrasions all over her body. (See Ex.P3 Observation Mahazar and Ex.P.5 Rough Sketch) Near her body, a pair of lady's chapal (M.O.7), a pair of hair pins (M.O.5) and a black colour shirt button (M.O.6) were also found.

27. P.W.7 Kottaiappan is V.A.O. of North Narasimmapuram. On 20.03.2009, at about 7 a.m., when he and his Assistant Chelladurai were in their office, the accused came and confessed to P.W.7 his killing of Palaniammal. He had stated his chance meeting with her in a tea shop in Karur; their illegal affair; her financial help to him; her giving of gold chains; the demand of the deceased; his evasive reply; her threatening to expose him to his parents and also to police; his decision to do away with her; on 09.03.2009, at about 8.30 p.m., his taking of her in his Bajaj Pleasure Motor Cycle to Kullampatti Branch Road and his killing of her by smashing her head with a big stone. He had further stated that since the police is searching him, if they caught him, they will harass him and therefore, he had surrendered to him. P.W.7 recorded his statement (Ex.P.8) and the accused signed in it and P.W.7 also attested it and also made his endorsement.

28. Since the place where the murder has taken place, lies within the jurisdiction of P.W.8 Samiyappan, V.A.O., Kakkavadi Village, P.W.7 informed him about Ex.P.8 extra-judicial confession and his taking of him to Vellianai police station. Around 7 a.m., he had produced the accused before P.W.17 Udhayakumar, Inspector.

29. It is the evidence of P.W.8 Samiyappan V.A.O that the accused gave Ex.P.43 confessional statement. It has the signatures of P.W.8, his Assistant (Ex.P.10) and of the accused (Ex.P.9). The accused did not deny his signature therein.

30. Pursuant to his confessional statement, the accused took them to the scene place, pointed out the stone having blood stains (M.O.10) and that was seized by P.W.17 under Ex.P.11, mahazar. Thereafter, the accused took them to his house and produced two gold chains (M.Os.3 and 4) and his T-Shirt (M.O.11).

Thereafter, he took them to R.S.K. Cycle Stand and shown his motor cycle (M.O.12) and P.W.17 seized them under mahazar. P.W.8 stated about his witnessing the recording of the confessional statement, seizure of the material objects and also his attesting of the seizure mahazars.

31. P.W.6 Loganathan, the eldest son of the deceased, then studied M.Sc. in a college in Tiruchirappalli. After his mother's death, on 19.03.2009, when the house was cleaned, he came across Ex.P.6 letter containing writings of his mother. He had produced it to P.W.17, who received the same under mahazar. P.W.2 Periasamy, is living with them. When Ex.P.6 was unearthed, he was also present.

32. Ex.P.6 runs as under:

md;g[s;s lah mth;fSf;F,

T.jdk; vGJk; fz;zPh; kly;. vd;dbtd;why;, ehd; 4 gt[d; brapd;, gzk; 50 MapuKk; bre;jpyplk; bfhLj;J cs;Bsd;. ehd; bre;jpyplk; bfhLj;jij Bfl;lhy; vd;id kpul;Lfpwhh;. cd;id bfhd;WtpLBtd; vd;W kpul;Lfpwhh;. mthpd; Kfthp : bre;jpy;

mg;gh bgah; : M.KUfd;

mk;kh bgah; : fyh

bre;jpypd; cld; gpwe;jth;fs; re;JU nd;bdhUth; bgah; bjhpatpy;iy. Kd;W Bgh; Mz;fs; kl;Lk;.

bre;jpy; t PL rjhrptk; lhf;lh; M!;gpl;ly; gpd;g[wk; cs;sJ. gz;lhpehjd; bjU vd;W vd;dplk; brhd;dhh;.

vd;Dila Kfthp:

T. jdk; ,

rpd;dFs;Jg;gl;o,

rpd;dFs;Jg;gl;o, ghfej;jk; ,

fUh; khtl;lk;.

vd;Dila kuzj;jpw;F M.bre;jpy;jhd; fhuzk;.

M.bre;jpy;jhd; KG fhuzk;

KGf;f KGf;f fhuzk; M.bre;jpy;.

33. The evidence of P.Ws.2, 3 and 6 shows that late Palaniammal was doing finance and also lend money on pledging jewels. From her house, P.W.2 found Ex.P.2, four papers containing details of her money lending and other accounts. On 21.03.2009, P.W.2 had handed over those papers to P.W.17, who had seized them under Ex.P.7 mahazar.

34. It is seen that both in Ex.P.2 and Ex.P.7 there are no signatures of Palaniammal. But there are endorsements, words, figures and writings. It has to be ascertained whether they are in the handwriting of Palaniammal.

35. Both Ex.P.2 and Ex.P.6 are not admitted documents. They are disputed by the accused. Naturally he will oppose them.

36. P.W.2 is living in the joint family along with Palaniammal and her sons. P.W.6 is elder son of the deceased. They are aware of her writings. It is pertinent to note that Exs.P.2 and P.6 were produced from her house.

37. P.W.17 produced Exs.P.2 and P.6 under Form 95 to the Court. Court sent them to Document Examiner for opinion.

38. P.W.16 Vasanthasundari, Document Expert has several years of experience in this field. She is a skilled person. She is an expert within the meaning of Section 45 of the Indian Evidence Act, 1872. She is competent to offer her opinion evidence on those disputed/questioned documents.

39. P.W.16 examined the writings in Ex.P.2 - A.1 to A.9 (Ex.P.37) and the writings in Ex.P.6 - Q.1 to Q.8 (Exs.P.33 to 36). She analysed the writings in both the documents. According to her, the writings in Ex.P.2 (A.1 to A.9) and the writings in Ex.P.6 (Q.1 to Q.8) have all been written by one and the same person. She had also given her reasoning for the same (Ex.P.39 Reasoning Sheet). It was received by the Court (Ex.P.40).

40. It is the evidence of P.W.6 Loganathan that his mother was wearing two gold chains, gold bangles and gold ear-studs, later, she was not wearing the gold chains, when asked about the chains, she told him that she gave them to the accused and the accused promised to return them.

41. M.Os.3 and 4 gold chains weighing 2 sovereigns and 2 1/4 sovereigns respectively were recovered from the house of the accused. The recovery has been witnessed to by P.W.8 Samiayappn, a Revenue staff.

42. P.W.15 Premkumar, Accountant, in Dhanalakshmi Gold Traders, Karur knows the accused since on few occasions, he had pledged jewels with them and redeemed the jewels also. Under Ex.P.30, on 01.07.2008, the accused had pledged two sovereigns of gold chain, later redeemed it and under Ex.P.31 on 19.02.2009, pledged 2 1/4 sovereigns of gold chain. They are M.Os.3 and 4 chains, which were recovered from the house of the accused. M.Os.3 and 4 were identified by P.W.15. P.W.3 second son of the deceased also identified them as belonging to his mother. In Ex.P.8 extra-judicial confession, it is mentioned that the deceased had demanded the jewels, he did not give them, so, she threatened to expose him to his parents and to police, in the circumstances, he had decided to kill her and thus killed her on 09.03.2009.

43. The jewels were redeemed by the accused, he did not return them to her and kept them in his house. That is how they were recovered from his house in the presence of witnesses based on his Ex.P.43 disclosure statement. In Ex.P.8 extra-judicial confession as well as in his Ex.P.43 confessional statement the accused had stated about these gold chains.

44. On 20.03.2009, the accused had surrendered himself before P.W.7 Kottaiyappan, V.A.O., North Narasimmapuram. The accused also belongs to the same village. In Ex.P.8, he had stated that he had killed her. He had also stated why he had killed her. The accused had surrendered before the V.A.O. of his village with a purpose. He wanted to avoid police harassment, that is why he had surrendered himself before P.W.7.

45. Ex.P.8 statement has been signed by the accused. It has been attested to by P.W.7. P.W.7 has stated that he had recorded verbatim what has been stated to him by the accused. Ex.P.8 has been sent to the court on the same day and it was also received by the Magistrate on the same day. Ex.P.8 evidences the statement given by the accused to P.W.7. There is no reason for P.W.7 to implicate the accused in this case. P.W.7 has no enmity towards the accused.

46. The accused having given Ex.P.43 confessional statement on 20.03.2009 to P.W.17 has been stated by P.W.8 Samiyappan. The evidence of P.W.8 gets corroborated by the evidence of P.W.15, a private person. The accused did not say that he has been harassed to make Ex.P.43 disclosure statement.

47. It is relevant here to note that in P.NAVARASU murder case, also known as JOHN DAVID case [2011(3) CTC 104] with regard to Section 27 of the Evidence Act recovery, the Hon'ble Supreme Court held that a confessional statement given by the accused in the presence of V.A.O. and his Assistant cannot be simply disregarded as the said officials are independent witnesses and they have no axe to grind as against accused persons.

48. From the scene place, on 10.03.2009, in the presence of P.W.4 Boopathi, President, Kakkavadi Village Panchayat, an independent person, M.O.6 Shirt button has been recovered. From the house of the accused, T-Shirt (M.O.11) has been recovered. In M.O.11 there was no button. Near the dead body M.O.6 was recovered. M.O.6 links M.O.11, it links the accused with the scene place and the deceased.

49. The entries in Ex.P.2 relates to finance business done by the deceased. It was traced from the house of the deceased and produced by P.W.2 Periasamy. So also, Ex.P.6 letter has been traced by P.W.6, the elder son of the deceased. They were received under Mahazar by P.W.17. They were also produced to the court under Form 95.

50. It has been contended that Ex.P.2 and Ex.P.6 have not been admitted by the accused. He will not admit as they were produced as against him. So, he is disputing them.

51. Admittedly, there is no signature both in Ex.P.2 and P.6. That does not mean that on that account it should be brushed aside. Though no signature is there, there are hand writings. The question is whether the hand writings in Ex.P.6, which implicates the accused is really of the deceased.

52. For comparison purpose, her writings in Ex.P.2 accounts has been produced. The hand writings therein are disputed. Merely on account of that, it cannot be thrown out.

53. In such circumstances, there are several modes to prove the handwritings of a person stated to have been contained in a written document. As per explanation to Section 47 of the Indian Evidence Act, such writings can be proved through the persons, who are acquainted with the handwritings of the person said to have wrote them.

54. P.W.6 is her grown up adult son. P.W.2 is her cousin brother. She resided with them in the joint family. They are well acquainted with her signatures. They could say that they are in the handwriting of the deceased.

55. The technical view as to the handwriting has to be given by skilled persons. The Document Experts by their long experience are invited to give such opinion. In this case, P.w.16 Vasanthasundari, who has several years of experience in this field to her credit had examined the handwritings in Ex.P.2 and Ex.P.6 and applying the scientific method she gave her opinion (Ex.P.38) that the hand writings in Ex.P.2 and in Ex.P.6 are of same person. She had also given her reasoning for the same (Ex.P.39). In the circumstances, we accept that Ex.P.6 and Ex.P.2 are in the handwriting of deceased.

56. Handwriting evidence, expert opinion evidence on hand writing, is a weak piece/form of evidence. But, such evidence alone is too dangerous to record a conviction. But, when it is supported by other evidence, corroborated, it can be a reliable evidence, it will add lustre to the other evidence.

57. Now, let us see the contents of Ex.P.6. In Ex.P.6, she had stated that she gave money and her gold chains to the accused. When she had demanded them, the

accused had criminally intimidated her and also threatened to kill her. She had also stated that if she dies, the accused is solely responsible for that.

58. We have seen that there were prior acquaintance as between the deceased and the accused. He had also brought her in his bike and dropped her near her house. The evidence of P.Ws.3 and 6 discloses that she gave money and also her gold chains to the accused. These informations are available in Ex.P.8 extra-judicial confession also. The evidence of P.W.15 shows that the accused had pledged her M.Os.3 and 4 gold chains and redeemed them. Based on his confessional statement Ex.P.43, those M.Os.3 and 4 were recovered from the house of the accused and they were identified to be of the deceased by P.W.3. According to P.W.15, these chains were once pledged with them by the accused and were redeemed by him.

59. Of course, there is no date in it. It is not clear that when she wrote it. But one thing is clear that it was written after she had demanded her money and gold chains from the accused. Exs.P.6 shows her fear that she will be killed by him.

60. Now, in this case, the contents of Ex.P.6 shows that prior to her death Palaniammal expected danger to her life from the accused and she had also mentioned the reason therefor and she has stated clearly that if she is killed the accused alone is responsible for that.

61. The contents of Ex.P.6 have been corroborated by the oral, documentary evidence, Ex.P.8 extra-judicial confession and Section 27 Evidence Act recovery. In the circumstances, Ex.P.6 gives link to the accused and it furnishes an incriminating circumstance against the accused.

62. The postmortem of the dead body of Palaniammal by P.W.9 Dr.Mythili reveals that she died of shock and hemorrhage due to head injury. M.O.10 big stone, of course, was available in that secluded place. It was recovered in the presence of revenue staff based on Ex.P.43 confessional statement of the accused on 20.03.2009. The availability of that stone is specifically known to the accused. Before that nobody knows that such a stone was used for stoning her. It will become a relevant fact under Section 8 of the Indian Evidence Act. P.W.9 opined

that the injury found on the dead body is possible by a stone like M.O.10.

63. In Ex.P.43 confessional statement it has been stated that it was typed in computer. However, in his evidence P.W.8 had stated that it was written.

64. Ex.P.43 was recorded on 20.03.2009. P.W.8 was examined in the trial Court nearly after 1 1/2 years, on 28.09.2010. He cannot be expected to keep this ever in his mind and repeat it before the Court. In the facts and circumstances, it is quite an insignificant matter also.

65. Ex.P.8 extra-judicial confession has been given to P.W.7, who is V.A.O. of the village, to which the accused belongs. He gave the confession with a purpose in his mind. He wanted to escape from police harassment. That is why he had surrendered before him. He wanted his help. P.W.7 was not having any motive against the accused to make a false statement against him. The contents of Ex.P.8 also has been found corroborated on its various aspects by the oral evidence, material objects seized and Ex.P.6 dying declaration.

66. Anbarasan, Village Assistant, Kakkavadi village informed P.W.1 about the dead body being found in that place and she came to the place, seen it and lodged the complaint on 10.03.2009. Nearly after 1 1/2 years, on 27.09.2010, she was examined in the court. While giving her evidence she had stated that Anbarasan had attested Ex.P.1. But, in Ex.P.1 there is no such attestation. It is a slipperiness of tongue. She has no need to subscribe to a false complaint to implicate the accused. She is an independent witness.

67. There is no rule or law that extra-judicial confession has to be corroborated. It is only a rule of caution. Yet, in this case, the extra-judicial confession has been corroborated in its contents by the oral evidence, Section 27 Evidence Act recovery and by Ex.P.6 letter.

68. Timely recording of extra-judicial confession is a welcome feature. But, it cannot/could not be an invariable rule in all the cases. Whenever the accused elects to give extra judicial confession, then only an extra-judicial confession will emerge. Though in this case, occurrence had taken place on the night of

09.03.2009, the search of the accused by the police was so intense that only on 20.03.2009 he had elected himself to go to the V.A.O. of his village and confess his killing of the deceased and seek his protection from police harassment.

69. The ink differs in the signatures of P.W.7 and the accused in Ex.P.8. We cannot expect both shall have or use same ink pen in signing the extra-judicial confession.

70. The evidence of P.Ws.2, 3 and 6 shows that besides her employment in Karur Tex, she did finance and gave money to parties on their pledging of jewels. She seems to have not returned jewels and money to certain customers. It is natural that they will come and demand it. There is no acceptable evidence that some of them developed enmity, a strong reason to kill her. The defence version that some of her disappointed clients would have killed her was not backed by any incriminating evidence to probabalise the defence version and improbabilise the prosecution version.

71. Now, we have to take a stock of the various circumstances found against the accused.

72. The accused knows the deceased, he had illegal affair with her; when he had refused to return her money and gold chains, she had threatened to expose him to his parents and also to the police, so, the accused had strong reason/motive to do away with her; in the circumstances, she was murdered at a secluded place by smashing her head, there is Ex.P.8 extra-judicial confession; there is recovery of M.O.6 shirt button from the scene of crime, which relates to M.O.11 T-Shirt recovered from his house; the accused had pledged her M.Os.3 and 4 jewels in Dhanalakshmi Pawnbroker Shop, which were recovered from his house, there are acceptable Section 27 Evidence Act recovery; there is incriminating information in Ex.P.6 implicating the accused and the medical evidence shows that she suffered homicidal death in the manner stated by the prosecution. A cumulative consideration of these incriminating circumstances without any missing link forms a complete chain unerringly proceeding towards the only conclusion that the accused had murdered the deceased.

73. Thus, the prosecution has established its case beyond all reasonable doubts. Thus, we concur with the finding of the learned Sessions Judge, Karur that the accused is guilty under Section 302 I.P.C. and the accused has been rightly sentenced to life by the learned Sessions Judge, Karur.

74. In the result, this Criminal Appeal is dismissed, confirming the conviction recorded and the sentence imposed upon the appellant, in S.C.No.33 of 2010, on 25.11.2010 by the learned Sessions Judge, Karur.

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