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CRL.A.NO.24 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18 / 07 / 2023

JUDGMENT PRONOUNCED ON: 23/ 08 / 2023

CORAM:

**THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

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Babu @ Gopinath

... Appellant

Versus

The State Rep. By Inspector of Police
Chithode Police Station
Erode, Erode District.
(Crime No.459 of 2011)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the judgment passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Erode in S.C.No.75 of 2018 dated 15.11.2021 convicting the appellant for the offences under Sections 392 and 302 of IPC and direct the fine amount of Rs.15,000/- paid by the appellant to be refunded.

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For Appellant : Mr.B.Thirumalai
Mr.D.Palanisamy
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

R.SAKTHIVEL, J.

This Criminal Appeal is preferred by the first accused – Babu alias Gopinath (hereinafter referred to as 'A1' for the sake of brevity and convenience) in S.C.No.75 of 2018 on the file of Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode, assailing the judgment passed by the trial court on 15.11.2021 in which he was convicted for the offences under Sections 392 and 302 of the Indian Penal Code (45 of 1860) [hereinafter referred to as 'IPC' for the sake of brevity] and sentenced to undergo Rigorous Imprisonment for Ten years with a fine of Rs.5,000/-, in default, to undergo two months Simple Imprisonment, for offence under Section 392 of IPC and to undergo Rigorous Imprisonment for Life with a fine of Rs.10,000/-, in default, to undergo two months Simple Imprisonment, for offence under Section 302 of IPC.

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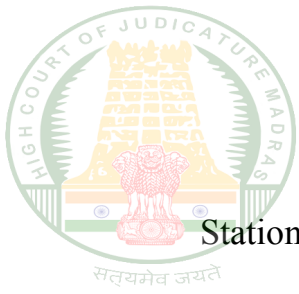


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2. The case of the prosecution, in brief, is as follows:

(i) The deceased - Gowri is the mother of the defacto complainant - Pandian and paternal grandmother of A1. A1 requested money from the deceased for redeeming the pledged jewels of his wife. Since the deceased refused to give money, A1 along with Vijayan (Second accused, hereinafter referred to as 'A2' for the sake of brevity and convenience) planned to abduct the deceased and rob her jewels. On 06.07.2011 at 10.15 a.m., the accused A1 and A2 picked up the deceased who was going to mill for work in a Maruthi Omni Van bearing Registration No.TN33-B-2001 near R.K.M. Gas Limited. A1 and A2 with an intention to rob the deceased, strangled her neck with a wire thereby causing her death and robbed her jewels worth about Rs.1,27,500/- weighing 8½ sovereigns and threw her into some thorn bush at Odakkadu of Perundurai Police Station limit. Then A2 threw a blackstone and caused injuries on her head, face and various parts of her body to conceal her identity.

(ii) Since the mother (deceased) of the defacto complainant did not return home after work from Arthika Cotton Mill, the defacto complainant lodged a complaint on 07.07.2011 at 11.30 hours before Chithode Police



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Station, Erode District. An FIR was registered by Chithode Police Station in

Crime No.459 of 2011 for 'women missing'.

(iii) In the meantime, the Village Assistant attached to the Village Administrative Officer of Perundurai found a dead body of an aged woman in one Palanisamy's land and informed him about the same. On 07.07.2011, the land owner Mr.Palanisamy (P.W.7) lodged a complaint (Ex-P.4) before Perundurai Police Station, Erode District. Based on the complaint, a case in Crime No.463 of 2011 (Ex-P.34) under Section 174 (Suspicious death) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C' for the sake of brevity) was registered on the same day. Thereafter, A1 and A2 surrendered before the Village Administrative Officer, Perundurai on 09.07.2011 and gave extra-judicial confessions (Ex-P.9 and Ex-P.10 respectively). The Village Administrative Officer, Perundurai produced A1 and A2 before the Inspector of Police, Perundurai, on the same day at 10.30 am along with the extra-judicial confessions.

(iv) The Inspector of Police, Perundurai (P.W.22) arrested A1 and A2 on 09.07.2011 at 10.30 am. While A1 and A2 were in police custody, they



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gave confession statements. Based on the confession statements, the sections were altered from 174 of Cr.P.C., to 302 and 379 of IPC. Further, the Investigating Officer based on the confession statements of A1 and A2, recovered two cell phones with sim cards from A1 and A2 (PMO-20 and PMO-21 respectively; Omni Van (PMO-14); 2 ¼ meter black wire (PMO-22); two gold chains weighing 8.150 grams and 39 grams respectively (PMO-23 and PMO-24 respectively) and cash of Rs.10,000/- (PMO-15) from A1's house and also recovered (a) Nose stud (PMO-7) ; (b) one pair of Ear stud (PMO-8) ; (c) one pair of Bangles (PMO-9) ; (d) one ring (PMO-10) ; (e) Office copy of the receipt containing particulars regarding jewel loan (PMO-11) ; (f) photocopy of Promissory Note dated 06.07.2011 (PMO-12) ; and (g) photocopy of driving license of A1 (PMO-13) from Manappuram Gold Finance under the seizure mahazar (Ex-P.8).

(v) In this case, it's an undisputed fact that on 06.07.2011, a woman missing complaint was lodged by P.W.1 before Chithode Police Station in Crime No.459 of 2011 and investigation was going on. Meanwhile, on 07.07.2011, at about 16 hours, Palanisamy (P.W.7) who is a resident of Varapalayam village of Perundurai police limit gave a Complaint (Ex-P.4) at



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Perundurai Police Station stating that a dead body of woman was found in his

land. Based on Ex-P.4 complaint, a case in Crime No. 463 of 2011 under Section 174 of Cr.P.C was registered and investigation was started and during investigation, section of law has been altered into Sections 302 and 379 of IPC and the alteration report is marked as Ex-P.37. P.W.22 conducted the investigation and as per the orders of the Deputy Superintendent of Police, he sent the case file to Chithode Police Station on the point of jurisdiction. The Inspector of Police, Chithode Police Station after completing the investigation, filed a final report against A1 and A2 under Sections 364, 392, 302 and 201 of IPC on 13.12.2011 before the learned Judicial Magistrate No.III, Erode.

(vi) After perusing the case file, learned Judicial Magistrate No.III, Erode, registered a case in PRC No.4 of 2012. Since the offence under Section 302 of IPC is triable only by the Sessions Court, the learned Judicial Magistrate No.III committed the case for trial to the learned Principal Sessions Judge, Erode. In turn, the learned Principal Sessions Judge, Erode, took it on file as S.C.No.75 of 2018 and made it over to the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Erode.



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(vii) The learned Sessions Judge, after hearing both sides and after perusing the records, found that there are sufficient materials available on record to presume that A1 and A2 committed the offence and framed charges under Sections 364, 392, 302 and 201 of IPC against them.

(viii) In order to prove the case, the prosecution examined 24 witnesses as P.W.1 to P.W.24 and marked 51 documents as Ex-P.1 to Ex-P.51 and 24 material objects as PMO-1 to PMO-24. The appellant/A1 did not examine any witness and no document was marked.

(ix) After analyzing the oral and documentary evidence, the Trial Court came to the conclusion that the charges framed under Sections 392 and 302 of IPC against A1 were proved and thereby convicted and sentenced him as stated supra. Further, the trial court came to the conclusion that the prosecution has not established the charges framed against A1 under Sections 364 and 201 of IPC. Accordingly, the trial court acquitted the appellant / A1 for the offences under the said provisions. As far as A2 is concerned, the trial court came to the conclusion that the prosecution has not proved the charges levelled against A2 and accordingly acquitted A2. Feeling aggrieved with the conviction and sentence, the appellant/ A1 has filed this Criminal Appeal.



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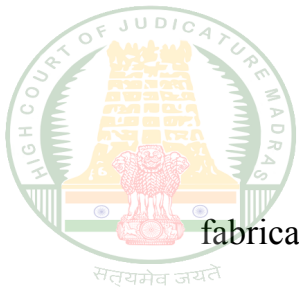
3. The points that arise for consideration are thus:

(i) Whether the charges against A1 under Sections 392 and 302 of IPC are proved by the prosecution beyond reasonable doubt?

(ii) Is there any reason to interfere with the trial court's judgment?

Discussion and Decision to Point Nos.(i) and (ii) :

4. Learned counsel for the appellant / A1 argued that this case is based on alleged extra-judicial confession, arrest, confession and recovery. P.W.1 to P.W.5 did not support the case of the prosecution. The trial court based on the evidences of P.W.10 who is the Branch Manager of Manappuram Gold Finance and P.W.11 who is the Village Administrative Officer of Perundurai, convicted the appellant. He further argued that the appellant/A1 did not give any confession before the Village Administrative Officer and the alleged confession said to have been given by the appellant / A1 before the Village Administrative Officer is a false and fabricated one. Further, the appellant did not give any confession to the Inspector of Police, Perundurai and alleged recoveries are all



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fabricated for the purpose of this case. He did not commit any offence as alleged

and did not pledge the jewels with Manappuram Gold Finance. The learned

counsel specifically pointed out that PMO-11 to PMO-13 were not proved by

prosecution as per law. Elaborating the said point, learned counsel drew our

attention with regard to PMO-11 (office copy of the receipt issued by

Manappuram Finance Limited) and argued that PMO-11 is a computer

generated receipt / print out and no certificate under Section 65(B)(4) of 'The

Indian Evidence Act, 1872 (1 of 1872)' [hereinafter referred to as 'Evidence Act'

for convenience and brevity] was annexed, hence, it is an inadmissible

document. He further argued that prosecution has not examined the Assistant

Manager of Manappuram Finance Limited, who is said to be a connected person

to PMO-11 to PMO-13. He submitted that the trial court has not duly considered

the above aspects and erroneously has come to conclusion that the prosecution

has proved the case. Further, he submitted that the Trial Court without

appreciating the evidence and documents, has erroneously come to the

conclusion that the appellant killed her grandmother for gain. There is no

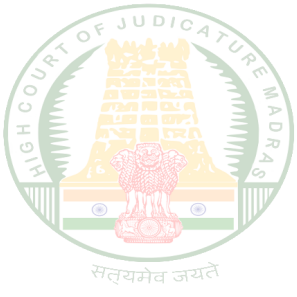
sufficient evidence available on record to conclude that the appellant has

committed the offence. Accordingly, learned counsel prayed to allow the appeal.



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5. Per contra, learned Additional Public Prosecutor appearing for the State submitted that the jewels which were recovered from Manappuram Finance Limited were all identified by P.W.2 who is none other than the paternal uncle of the accused/A1, as the same were worn by his mother (deceased). Further, the prosecution has established the extra-judicial confession, confession and recovery of jewels (PMO-7 to PMO-10) from Manappuram Gold Finance. Further, the prosecution marked PMO-11 to PMO-13 through P.W.10 who is the Branch Manager of Manappuram Gold Finance and no objections were raised by A1 for the same. He further submitted that the deceased is none other than the grandmother of the appellant. The prosecution has established that the appellant has pledged PMO-7 to PMO-10 worn by the deceased with Manappuram Gold Finance on 06.07.2011 at 12.47.46 hours. Thus, the prosecution has proved the case beyond reasonable doubt. Further, he submitted that the trial court after considering the entire materials and appreciating the evidence on record, has rightly come to the conclusion that the accused/A1 committed the offence. Hence, there may not be any reason to interfere with the trial court's judgment. Accordingly, the learned Public Prosecutor prayed to dismiss the appeal.



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6. This Court has considered the submissions made on either side and perused the entire materials available on record.

7. The case of the prosecution rests squarely on circumstantial evidence. The following circumstances have been projected by the prosecution to connect A1 with the offence for which he was convicted.

(i) Last seen theory gathered from Ex-P.1 complaint;

(ii) Extra-judicial confession given by A1 under Ex-P. 9 and Ex-P. 10;

(iii) Admissible portion of the confession statement of A1 and A2 under Ex-P.38 and Ex-P.39 respectively;

(iv) Recovery of PMO-7 to PMO-13, PMO-23, PMO-24 and cash of Rs.10,000/- from A1's house.



8. Before going into the merits of the case, it is apposite to state the

legal position in respect of a case which is rested only upon circumstantial evidences. The Hon'ble Supreme Court in **HANUMANT VS. STATE OF MADHYA PRADESH [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:-

"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



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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...'

9. Further, in ***PADALA VEERA REDDY VS. STATE OF ANDHRA PRADESH AND OTHERS [AIR 1990 SC 79]*** and in ***SHAIK MUSHTAN VALI VS. STATE OF ANDHRA PRADESH [2007 (9) SCC 342]*** the Hon'ble Supreme Court has reiterated the principles laid down in the ***Hanumant's case*** (cited supra).



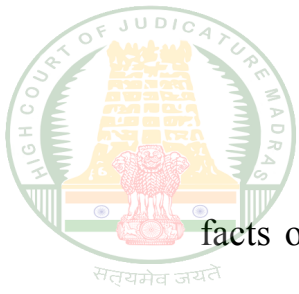
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10. In **STATE OF UTTAR PRADESH VS. ASHOK KUMAR**

SRIVASTAVA [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.

11. 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 VS. STATE [1995 SUPP (4) SCC 259]**.

12. As far as the confession given by appellant/A1 to the police officer is concerned, it is made after arrest, hence, confession leading to new



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facts or recovery alone is admissible under Section 27 of the Evidence Act

[vide **PULUKURI KOTTAYA VS. KING EMPEROR (AIR 1947 PC 67)**].

13. In the light of the above legal principles, this Court approaches this case.

14. In the Ex-P.1 complaint given by P.W.1, it has been stated that his mother (deceased) returned back home on 06.07.2011 at around 9.00 am for breakfast from work and she left after breakfast. On her way to work, his son Babu alias Gopinath (A1) picked her up and dropped at her workplace. But P.W.1 in his examination, has not deposed the said fact. The prosecution cross-examined the P.W.1 under Section 154 of the Evidence Act but could not obtain anything in its favour. The prosecution examined one Venkidu alias Venkat as P.W.12 with a view to prove that the accused and the deceased were last seen together. But the examination of P.W.12, has not supported the prosecution version. One Sannasi, Security of Arthika Cotton Limited was examined as P.W.5 in order to prove last seen theory. His evidence is also not supporting the prosecution case.

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15. The prosecution has proved the fact that the deceased died due to homicidal violence by examining the Doctor (P.W.14) who conducted the post-mortem and post-mortem certificate (Ex-P.17) and Final Opinion (Ex-P.18). To be noted, post-mortem was conducted on 08.07.2016. In Ex-P.18, the Doctor has opined that the deceased died 48 to 72 hours prior to autopsy, due to shock and haemorrhage and injuries sustained by her over neck and head. The Prosecution collected the following material objects from the place where the dead body of the deceased was recovered:

<i>Sl.No.</i>	<i>Description</i>
PMO-1	Karungal (Black stone)
PMO-2	Pair of Tooth Set
PMO-3	Pair of black colour chappal
PMO-4	Fanta Bottle
PMO-5	Blood stained soil
PMO-6	Unblood stained soil

The Prosecution has proved the said facts by way of marking rough sketch (Ex-P.35) and observation mahazar (Ex-P.5), seizure mahazar (Ex-P.7) through P.W.22. But the said material objects do not connect the accused with the crime. Hence, the last seen theory relied on by the prosecution has not been established.

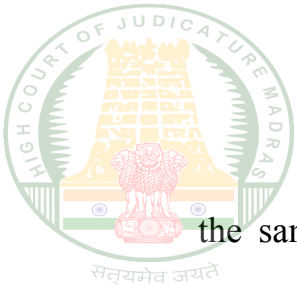


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16. According to the Prosecution, on 09.07.2011, A1 and A2 surrendered before Thiru. Paulraj (P.W.11) who is the Village Administrative Officer, Perundurai village and gave an extra-judicial confession. P.W.11 in his evidence deposed that on 09.07.2011, while he and his Village Assistant were at his office, A1 and A2 surrendered before him and gave confession statements which were marked as Ex-P.9 and Ex-P.10 respectively. Thereafter, he produced A1 and A2 before Inspector of Police, Perundurai.

17. This Court has perused the confession statement of A1 (Ex-P.9). No one has signed in the Ex-P.9 statement as a witness. The Village Assistant attached to P.W.11's office (Mr.Anandhasekhar), who was present at the time of confession, has not signed as witness. No particulars as to at what time A1 and A2 appeared and at what time he recorded the confession are available. P.W.11 and A1 and A2 were residing in different villages. There is nothing to show that they were related or known to each other. Unless a person trusts another, there is no question of unburdening his heart to such a person. Though the Village Assistant Anandhasekhar was cited as L.W.15 in the final report, he was not examined before the Court and no explanation was offered for

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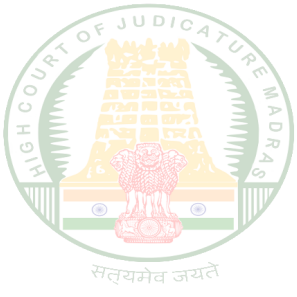
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the same. Therefore, this Court is of the view that P.W.11's evidence is not corroborated by any other evidence and hence, it is doubtful. Hence, this Court is of the view that the extra-judicial confession does not inspire confidence of this Court.

18. The Inspector of Police (P.W.22) deposed that on 09.07.2011 at 10.30 am while he was at Police Station, Perundurai, P.W.11 came and produced A1 and A2; that he arrested A1 and A2 in connection with Crime No.463 of 2011 under Sections 302 and 379 of IPC and that A1 and A2 gave confessions. The admissible portions of confession statements of A1 and A2 marked as Ex-P.38 and Ex-P.39 respectively.

19. Relevant portion of Ex-P.38 reads as follows:

'...ஓயரையும் என்னிடம் இருக்கும் என் பாட்டியின் தங்க செயின் மற்றும் செலவு செய்தது போக மீதம் உள்ள பணம் 10,000/-த்தையும் என் பாட்டியின் நகைகளை அடகுவைத்த ரசீதையும் என் பாட்டியின் நகைகளை அடகுவைத்த பணத்தில் திருப்பிய எனது மனைவியின் 1 1/2 பவுன் நகையையும் தங்களிடம் ஒப்படைக்கிறேன்...'



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20. Relevant portion of Ex-P.39 reads as follows:

'..... என்னை கூட்டி போனால்... செலவு செய்தது போக மீதம் உள்ள பணம் ரூ.8,500/- வீட்டில் இருப்பதையும் எடுத்து ஆஜர்படுத்துகிறேன்...!'

He further deposed that A1 identified the place of occurrence and then identified the Omni Van bearing Registration No.TN33-B-2001 at his residence from which a black wire was recovered; that he seized the said van under Ex-P.14 Seizure Mahazar ; that A1 handed over two gold chains, one weighing 8.150 grams (PMO-23) and other 39 grams (PMO-24) and Rs.10,000; that he seized the said articles under Ex-P.41 Seizure Mahazar; that thereafter, A1 took him, Village Administrative Officer Mr.Paulraj (P.W.11) and Mr.Anandhasekhar (Village Assistant) to Manappuram Finance Limited, where the Branch Manager Chandran (P.W.10) handed over PMO-7 to PMO-13 ; that he seized the said articles and documents under Ex-P.8 Seizure Mahazar. He further deposed that A2 took them to his house and handed over Rs.8,500/- to him; that he seized the said amount under Seizure Mahazar; and that the amount seized from A1 and A2 were invested in Bank deposit and the same is marked as PMO-15.

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21. To be noted, the owner of the Omni Van bearing Registration No.TN33-B-2001 was examined as P.W.15. Since he did not support the prosecution case, the prosecution cross-examined him under Section 154 of the Evidence Act but did not obtain anything in its favour.

22. This Court has carefully considered the evidence of P.W.22. The Omni Van bearing Registration No.TN33-B-2001 was not hidden by the accused. P.W.22 in his evidence deposed that A1 took him to his house and identified the Omni Van and handed over black wire (PMO-22) recovered from the car but in seizure mahazar (Ex-P.40), it is stated that the Omni Van was seized from Arumugam's (P.W.15) house. It's quite natural for the two gold chains to be available at A1's house. There is no firm evidence to show that one of the gold chains worn by the deceased and the other chain was redeemed by A1 from Pawnbroker. To be noted, the Investigating officer has not examined any person connected with the Pawnbroker from whom A1 redeemed his alleged jewels (PMO-23).



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23. Thiru. Chandran (P.W.10) is the Manager of Manappuram

Finance Limited. He deposed that he knows the accused A1-Gopinath. He further deposed that on 09.07.2011, the Inspector of Police, Chithode along with Inspector of Police, Perundurai and A1 came to his office and enquired about the case. He further deposed that the A1 / Gopinath pledged PMO-7 (Nose stud), PMO-8 (One pair of Ear stud without stone), PMO-9 (One pair of Bangles) and PMO-10 (Ring) and the same were handed over to the Inspector of Police, Chithode. He further deposed that he handed over PMO-11 (Particulars regarding jewel loan), PMO-12 (Promissory note dated 06.07.2011) and PMO-13 (Photocopy of Driving Licence of Gopinath) to the Inspector of Police and the same were recovered by him under Ex-P.8 (Seizure Mahazar). In his cross-examination, he admitted that he did not sign in PMO-11 and PMO-12. On the other hand, he deposed that the Assistant Manager has signed in PMO-11 and PMO-12 documents. He further deposed that he did not authorise any person to sign in the receipt. Further, he admitted that there are overwritings in the Seizure Mahazar and the same was not done before him and that he does not know who over-wrote the same.



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24. It is apposite to mention that, PMO-11 is said to have been seized from Manappuram Finance Limited. Admittedly, PMO-11 is the office copy maintained by the Manappuram Finance. As per the prosecution case, the original of the PMO-11 is supposed to be with A1. The admissible portion of the confession statement of A1 is reiterated hereunder:

'...என் பாட்டியின் தங்கசெயின் மற்றும் செலவு செய்தது போக மீதம் உள்ள பணம் 10,000/-த்தையும் என் பாட்டியின் நகைகளை அடகு வைத்த ரசீதையும் என் பாட்டியின் நகைகளை அடகு வைத்த பணத்தில் திருப்பிய எனது மனைவியின் 1½ பவுன் நகையையும் தங்களிடம் ஒப்படைக்கிறேன்...'

(Emphasis supplied)

But the originals of PMO-11 was not recovered from the accused A1. The Investigating Officer has not explained why the original of PMO-11 has not been recovered. It is needless to mention that, all the documents or materials came to light through confession may not be handed over to the Investigation Officer. However, the Investigating Officer has to explain why the said document or material has not been recovered from the accused. Suppose, if the original or Photocopy of PMO-11 was recovered from the custody of A1, it is



admissible as per Section 27 of the Evidence Act. In the said circumstances, this

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Court is of the view that the Certificate under Section 65-B(4) of Evidence Act need not be necessary. But on the other hand, PMO-11 was recovered / received from Manappuram Finance Limited which is supposed to maintain the records as per the statute to be stated infra. Hence, this Court is of the considered view that a Certificate under Section 65(B)(4) of Evidence Act is mandatory for the document PMO-11 vide **ARJUN PANDITRAO KHOTKAR VS. KAILASH KUSHANRAO GORANTYAL AND OTHERS [2020 (7) SCC 1]**. In the case on hand, Manappuram Finance Limited who handed over PMO-11 to the Investigating Officer is supposed to maintain the following documents as per the 'Tamil Nadu Pawnbrokers Act, 1943' ['Pawnbrokers Act' for the sake of convenience and brevity]. Section 10 of Pawnbrokers Act reads as under:

'10. Pawnbrokers to keep books, give receipts, etc.-(1) Every pawnbroker shall -

(a) regularly record and maintain or cause to be recorded and maintained in a pledge book in the prescribed form, an account showing for each pawner separately -



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(i) *the date of the loan, the amount of the principal of the loan and the rate of interest charged on the loan per cent per annum or per rupee per mensem or per rupee per annum;*

(ii) *the amount of every payment received by the pawnbroker in respect of the loan and the date of such payment;*

(iii) *a full and detailed description of the article or of each of the article taken in pawn;*

(iv) *the time agreed upon- for the redemption of the pawn; [***]*

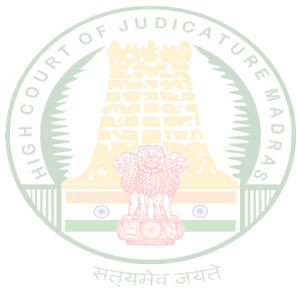
(v) *the name and address of the pawner, and where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof; [and]*

[(vi) such other particulars as may be prescribed.]

[(aa) regularly record and maintain or cause to be recorded and maintained a cash book in the prescribed form indicating the actual cash balance;]...

...

(3) *Notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act I of 1872), a copy*



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of the account referred to in clause (a) of sub-section (1) certified in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account. '

25. Further, Rules 7, 8 and 9 of 'Tamil Nadu Pawnbrokers Rules, 1943' ('Pawnbrokers Rules' for the sake of convenience and brevity] read thus:

7. Pledge book.- *The pledge book referred to in clause (a) of sub-section (1) of section 10 shall be in Form E.*

8. Pawn-Ticket, Sale Book of Pledges and receipts on Redemption of Pledge.- *The pawn-ticket, the sale book of pledges and the receipt on redemption of pledge referred to in clause (b) of sub-section (1) of section 10 shall be in Forms F, G and H, respectively.*

9. Certificates.- *No copy of an account shall be admissible in evidence under sub-section (3) of section 10, unless it contains two certificates at the foot, the first by the pawnbroker himself or his agent and the second by some*



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other person who has compared the copy with the original.

The certificate of the pawnbroker or his agents shall be in Form I and that of a person other than the pawnbroker or his agent shall be in Form J. '

26. PMO-11 and PMO-12 are vital documents in this case. The entire case is squarely based on PMO-11 to PMO-13 and the alleged recovery of PMO-7 to PMO-10. In these circumstances, the prosecution has to prove the said documents beyond reasonable doubt. As stated supra, the person said to have received PMO-7 to PMO-10 and PMO-12 and PMO-13 from the accused and issued PMO-11 to A1 is the vital witness to prove this case. Non-examination of the vital witness by the Investigating officer and non-examination of the vital witness before Court has not been explained by the prosecution. Further, the alleged signature of the Assistant Manager was also not proved by the prosecution. Since the entire prosecution case is rested on the recovery of PMO-7 to PMO-13, the prosecution ought to have proved the factum of pledging, recovery of articles and documents meticulously. The prosecution has proved that PMO-7 to PMO-10 were worn by the deceased but has failed to prove that the accused submitted application cum promissory note



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(PMO-12) and self attested copy of driving licence (PMO-13) with

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Manappuram Gold Finance beyond reasonable doubt. Further, as stated supra,

PMO-11 (particulars regarding jewel loan) has not been proved as per the law.

27. Further, since the case is rested on circumstantial evidence, call register details which would show the location of A1 and A2 are vital to prove the prosecution case. But the Investigating officer has not produced any Call Details Register (CDR) relating to PMO-19 and PMO-20 and not offered any explanation in this regard. Moreover, the prosecution has not proved the motive for the alleged offence. Hence, this Court is of the view that the extra-judicial confession allegedly given by A1 and recovery of PMO-7 to PMO-13 do not inspire confidence and do not connect the accused with the crime. Hence, the confession and recovery as alleged by the prosecution have not been proved beyond reasonable doubt. Therefore, this Court is of the view that the trial court has erroneously come to the conclusion that the prosecution has proved the chain of circumstances and thereby convicted A1. Hence, the trial court judgement is to be interfered by this court.

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28. It is to be mentioned that the following documents which are

vital to the prosecution case were sent to the jurisdictional Magistrate Court belatedly and no explanation was offered for the same.

<i>Sl.No.</i>	<i>Date of document</i>	<i>Exhibits</i>	<i>Description</i>	<i>Received by Court</i>
1	09.07.2011	Ex-P.7	Seizure Mahazar	16.09.2011
2	09.07.2011	Ex-P.8	Seizure Mahazar	16.09.2011
3	09.07.2011	Ex-P.14	Seizure Mahazar	16.09.2011

29. Section 161(3) of Cr.P.C., statements of vital witnesses namely Mr.Paulraj, Village Administrative Officer (P.W.11), Mr.Chandran, Manager of Manappuram Finance Limited (P.W.10), Mr.Anandhasekhar (L.W.15) and Mr.Venkidu @ Venkat (P.W.12) were sent to the jurisdictional Magistrate Court only on 23.06.2012. The prosecution has not explained reason for the said delay. This aspects also create doubt over the prosecution case vide ***In Re: KARUNAKARAN AND OTHERS (1975 (1) MLJ 209)***.

Conclusion:

30. As stated supra, the prosecution has not proved the extra judicial confession, confession and recovery of PMO-7 to PMO-11 and other



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materials. The Investigating Officer has not collected the account details about the alleged pledge made by A1. No explanation was offered in this regard.

Hence, this Court comes to the conclusion that the prosecution has failed to connect A1 with PMO-7 to PMO-13. The trial court's decision that the prosecution has proved all the circumstances is incorrect and the same is liable to be interfered by this Court. The points are answered accordingly in favour of the appellant / A1 and against the prosecution.

31. Resultantly, the Criminal Appeal is allowed and the judgment of conviction and sentence dated 15.11.2021 passed in S.C.No.75 of 2018 by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Erode is hereby set aside. The appellant / A1 is acquitted from all the charges and the bail bond if any, executed by him shall stand discharged. The fine amount if any paid by the appellant / A1 shall be refunded to the appellant. The appellant / A1 shall be released forthwith, if his custody is not required in any other case / cases.

32. This Court makes it clear that since the appellant is acquitted from all the charges,

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(i) PMO-7 to PMO-10, PMO-15 with accrued interest, PMO-23 and PMO-24 shall be returned to the legal heirs of the deceased - Gowri after the appeal time is over and as per the rules prescribed in this regard;

(ii) The Omni Van bearing Registration No.TN33-B-2001 (PMO-14) shall be returned to the owner of the vehicle after verifying necessary documents and after the appeal time is over and as per the rules prescribed in this regard;

(iii) PMO-20 and PMO-21 shall be returned to A1 and A2 respectively on proper identification, after the appeal time is over and as per the rules prescribed in this regard;

(M.S., J.)

(R.S.V., J.)

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Index : Yes
Speaking order
Neutral Citation : Yes
TK

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- 1.The Sessions Judge
Mahalir Neethimandram (Fast Track Mahila Court)
Erode.
- 2.The Inspector of Police
Chithode Police Station
Erode, Erode District.
- 3.The Superintendent of Prison
Central Prison
Coimbatore.
- 4.The Public Prosecutor
High Court of Madras.



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M.SUNDAR, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
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