

Madras High Court

Kamaraj : vs State Rep By on 27 September, 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A(MD).No.174 of 2015

Kamaraj : Appellant/second accused

Vs.

State rep by

Deputy Superintendent of Police,

Karur Sub-Division,

Karur District, Crime No.618 of 2011. : Respondent

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 10.03.2014 made in S.C.No.18 of 2012 on the file of the learned Principal Sessions Judge, Karur.

!For Appellant : Mr.R.Rajasekaran

^For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

:JUDGMENT

[JUDGMENT of the Court was delivered by S.NAGAMUTHU, J] The appellant is the second accused in S.C.No.18 of 2011, on the file of the learned Principal Sessions Judge, Karur. The Trial Court framed as many as eight charges against all the three accused, as detailed below. Charge Accused Penal Provisions 1 to 3 449 IPC 302 IPC 2 and 3 302 r/w 34 IPC 302 IPC 2 and 3 302 r/w 34 IPC 302 IPC 302 r/w 34 IPC 1 to 3 394 r/w 397 The first accused was one Mr.V.Santhanam @ Manojkumar. During the pendency of trial, the first accused died and thus, the charges against him stood abated.

2. By Judgment dated 10.03.2014, the Trial Court has convicted the accused Nos.2 and 3 under all the charges and accordingly punished them, as detailed below.

Accused Section of Law Sentence Fine amount 2 and 3 449 IPC To undergo imprisonment for life.

Rs.1,000/- in default to undergo rigorous imprisonment for six months. 2 and 3 302 r/w 34 IPC [three counts] To undergo imprisonment for life for each count.

Rs.1,000/- for each count in default to undergo rigorous imprisonment for six months.

2 and 3 394 r/w 397 To undergo imprisonment for life.

Rs.1,000/- in default to undergo rigorous imprisonment for six months. The sentences have been ordered to run consecutively. Challenging the said conviction and sentence, the appellant/the second accused has come up with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:- This is a case of triple murder for gain. The deceased, in this case, were one Mrs.Kalyani, Ms.Kalaiyarasi and Baby Karnika [hereinafter referred to as "D-1, D-2 and D-3 respectively"]. PW-3 is the husband of D-1 and father of D-2. PW-3 was a business man by profession. D-1 was a house wife and D-2 was a student doing post graduation. PW-2 is the daughter of PW-3 and D-1. She was given in marriage to PW-1, six years before the occurrence. Out of the said wedlock, D-3 - Baby Karnika was born. PW-1 was working as an Assistant Professor in Annamalai University at Chidambaram. Therefore, PW-1 and PW-2 were living in Chidambaram along with D-3. To enjoy the holidays, PW-1 and PW-2 had come to the occurrence village, namely, V.Pudupalayam, to the house of PW-3 and stayed with PW-3 and D-1 to D-3.

3.2. On 28.12.2011, PW-1 and PW-2, leaving D-3 with D-1 and D-2, had gone to Poolavalasal Village to participate in a house warming ceremony. They left the house of D-1 and D-2 at 02.30 PM. PW-3, on account of his business, had already left for Kattumannarkovil. Thus, after the departure of PW-1 and PW-2 from the house, D-1 to D-3 were in the house.

3.3. At the time of marriage between PW-1 and PW-2, the parents of PW-2 had presented 50 sovereigns of gold jewels to PW-2. For the purpose of safety, PW-2 had kept all the said jewels at the house of D-1 and D-2 at V.Pudupalayam in a steel bureau. D-1 and D-2 were also wearing gold jewels.

3.4. Around 06.30 PM, PW-1 and PW-2, after attending the function at Poolavalasal Village, returned to V.Pudupalayam to the house of D-1. When they reached the house, they found the outer entry gate of the house as well as the front door of the house were kept slightly open. On opening the gate and opening the main door of the house, PW-1 and PW-2 entered into the house. To their shock, they found D-1 lying on the cot and both her hands and legs were tied with ropes. A piece of clothe was found inserted into her mouth. There were cut injuries on the left side of the neck. She was in a pool of blood and she was dead. PW-1 and PW-2 further noticed that their loving daughter, Karnika, D-3, hardly aged about five years, was lying in a pool of blood near the cot. There were cut injuries on her neck also. Crying for help and raising alarm, they further searched for D-2. To their shock, they found D-2 lying dead in a pool of blood in the bathroom. Her hands and legs were also tied with a rope. A piece of cloth was found inserted into her mouth. There was a cut injury on the right side of her neck. She was also found dead.

3.5. PW-1 and PW-2 further noticed the wooden cupboard and the steel bureau were kept open. The safety locker in the steel bureau was also fully opened. The dresses in the bureau were found strewn on the floor. The jewels worn by D-1 and D-2 were also found missing. The jewels kept in the steel bureau and the wooden cupboard were also found missing. On hearing the alarm raised by PW-1 and PW-2, people gathered.

3.6. Immediately, thereafter, PW-1 went to Vengamedu Police Station, Karur District and made a complaint at 08.30 PM, on 28.12.2011. PW-37, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.618 of 2011, under Sections 302 and 380 of the Indian Penal Code. Since the assailants were not known, PW-1 mentioned that the assailants were unknown persons. EX-P1 is the complaint and EX-P48 is the First Information Report. Then, he forwarded both the documents to the Court, which were received by the learned Judicial Magistrate, at 11.30 PM, on 28.12.2011 and handed over the investigation to the Inspector of Police.

3.7. Taking up the case for investigation, at 09.30 PM on 28.12.2011, PW-41 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-7 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. He also recovered the ropes, by which the hands and legs of D-1 and D-2 were tied. Then, he arranged for a photographer to take photograph of the place of occurrence from various angles. In the hospital, inquests were held on all the three dead bodies. Then, he forwarded the dead bodies to the hospital for postmortem.

3.8. PW-26 ? Dr.M.Vijayakumar conducted autopsy on the dead body of D- 1, on 29.12.2011. He noticed the following injuries:-

"A cut injury present over right side of the neck, transversely placed margins are sharp size 15 cm X 3 cm X bone depth expose the blood vessels, nerves, trachea and oesophagus in injured position". EX-P31 is the postmortem certificate and EX-P32 is the viscera report. He gave opinion that the injuries found on the body of D-1 could have been caused by a weapon, like knife. He further opined that D-1 would appear to have died of shock and hemorrhage.

3.9. On the same day, he conducted autopsy on the body of D-2. He noticed the following injuries:-

"A cut injury present over right side of the neck, transversely placed margins are sharp size 15 cm X 3 cm X bone depth".

EX-P34 is the viscera report and EX-P35 is the postmortem certificate. He gave opinion that the death of D-2 could have been caused by a weapon, like knife. He further opined that the deceased would appear to have died of shock and hemorrhage due to the injuries found on the neck.

3.10. PW-27 Dr.T.Sakthivel conducted autopsy on the body of D-3, on 29.12.2011. He found the following injuries:-

"1. A cut injury present over left side of the neck, transversely placed margins are sharp size 10 cm X 2 cm X bone depth expose the blood vessels, trachea, oesophagus in injured position".

2. A cut injury left index finger 2 x 1 x (NC) cm".

EX-P37 is the viscera report and EX-P38 is the postmortem certificate. He gave opinion that the death of D-3 could have been caused by a weapon, like knife. He further opined that the deceased would appear to have died of shock and hemorrhage due to the injuries found on the neck.

3.11. PW-41 recovered bloodstained clothes from the dead bodies of all the three deceased and forwarded the same to the Court. At that juncture, the investigation was taken over by the Deputy Superintendent of Police, Namakkal, namely PW-42. PW-42 examined PW-1 to PW-5 and few more witnesses and recorded their statements, including the doctors, who conducted autopsy on the dead bodies of the deceased.

3.12. On 11.01.2012, PW-42 examined PW-8, the finger print expert, who lifted the chance finger prints from the Steel Bureau at the house of the deceased. The chance finger prints lifted from the Steel Bureau were compared by PW-8 with the finger prints of the deceased and the other inmates of the house. They did not tally. Thereafter, during the course of investigation, the fingers prints of the habitual offenders kept in finger prints Bureau of Karur District were compared with the chance finger prints lifted from the place of occurrence. The finger prints of the first accused tallied with two chance finger prints lifted from the Steel Bureau.

3.13. While so, on 17.01.2012, all the three accused were arrested by Namakkal Police in connection with a case in Crime No.1636 of 2011. From and out of the confession statements made by these three accused, it came to light that these three accused had involved in the crime, as projected in the present case.

3.14. On 21.01.2012, PW-42 sent the Inspector of Police to make formal arrest of all the three accused in connection with the present case. Accordingly, they were formally arrested by following the procedure established by law. On 25.01.2012, after effecting formal arrest, PW-42 gave a request to the jurisdictional Magistrate for issuance of PT warrant for production of all the three accused before the said Court. Accordingly, all the three accused were produced before the jurisdictional magistrate on 02.02.2012. At the request made by PW-42, all the three accused were handed over to PW-42 for police custody for the purpose of interrogation. The learned Judicial Magistrate granted police custody of all the three accused for five days. Thereafter, they were brought to the Vengamedu Police Station, at 04.30 PM, on 02.02.2012.

3.15. While in police custody, all the three accused expressed their willingness to make voluntary confessions. Therefore, PW-42 requested PW-20, the then Village Administrative Officer, to be present in the Police Station. Accordingly, he appeared before PW-42 along with his Village Panchayat Assistant, by name, Mr.Subramaniam. In their presence, at 06.00 PM, the first accused made a voluntary confession, which was reduced into writing by one Mr.Prabhakaran. At 08.00 PM, on the same day, the second accused made a voluntary confession, which was also reduced into

writing. At 10.00 PM, the third accused made a voluntary confession, which was also reduced into writing. In their respective confessions, the accused had made disclosure statements about the properties, the weapons and the places, where they have hidden the weapons and also the bloodstained clothes.

3.16. EX-P60 is the disclosure statement made by the first accused. In pursuance of the said disclosure statement, the accused Nos.1 to 3 took the police and the witnesses to Cauveri Bridge and from the north bank, they produced bloodstained clothes, bloodstained knives and two full hand shirts. PW-42 recovered the same under EX-P13, a mahazer. Then, in pursuance of the said disclosure statement by the first accused, from one Mr.Rengan, [PW-10], a gold thali chain, weighing eight and half sovereigns, a gold dollar, weighing 11 grams, a pair of ear studs, weighing 5.500 grams, gold nose screw and another gold dollar were recovered.

3.17. Similarly, in pursuance of the said disclosure statement by the first accused, from one Mr.Ponnusamy, [PW-12] PW-42 recovered a gold necklace, weighing 17 grams, a pair of gold ear studs, weighing 3.20 grams, a gold ring, weighing 3 grams and a gold ear studs weighing one gram. In pursuance of the said disclosure statement made by the first accused, from one Mr.Ravi Meta [PW-17], a gold ear stud, weighing half sovereign, a pair of gold ear studs with green colour stones, weighing 3/4 sovereign, a pair of gold ear studs, weighing half sovereign, a gold mattal, weighing 1/2 sovereign and another gold ear stud weighing 1/2 sovereign were recovered.

3.18. In pursuance of the said disclosure statement made by the second accused, he took the police and the witnesses to his house and produced a gold bracelet, a gold coin, weighing 1 sovereign, another gold coin, weighing 1 sovereign, yet another gold coin weighing half sovereign. PW-42 recovered the same under a mahazer. Then, in pursuance of the said disclosure statement made by the third accused, he took the police and the witnesses to Kamatchi Nagar at Kuppuchipalayam and produced a gold dollar chain, weighing 10 grams, a pair of gold simikki, weighing 5.400 grams, a ladies gold ring, weighing four grams, a baby gold ring, weighing 1.700 grams and a TVS Victor Motorcycle bearing Registration No.TN-59-5927. [These gold material objects have been identified by PW-2 and PW-3 as the stolen properties]. Then, he forwarded the accused to the Court for judicial remand and handed over the material objects also to the Court.

3.19. On 18.02.2012, when these three accused were originally arrested, the first accused had made a voluntary confession to the Deputy Superintendent of Police, Namakkal, in connection with the case pending on their file. In pursuance of the said disclosure statement, he produced a plain ear stud weighing four grams, a gold ear stud with white stone weighing 3.200 grams, a gold ear stud with white colour stones, weighing 1.440 grams and a pair of ear studs. PW-42 recovered these properties and produced the same before the learned Judicial Magistrate, because, they were all stolen properties in the present case. Similarly, on 18.02.2012, out of the disclosure statement made by the first accused, the Deputy Superintendent of Police, Namakkal, recovered a gold chain, weighing 40.20 grams, a pair of gold bangles, weighing 29.90 grams, a gold pair of bangle weighing 29.00 grams, a gold bangle weighing 1.900 grams and a gold ring.

3.20. Similarly, on 18.02.2012, in pursuance of the said disclosure statement by the first accused, a gold bangle, weighing 15.90 grams, a gold bangle weighing 19.30 grams, a gold mattal, weighing 48.30 grams and, a mattal chain weighing 22 grams, yet another mattal weighing 20.60 grams, a TV model gold ring, weighing 2.500 grams and another ring weighing one gram were recovered. PW-42 produced these materials before the Jurisdictional Magistrate by receiving the same from the Court of Namakkal.

3.21. As we have already pointed out, the finger prints of the accused Nos.1 and 2 tallied with the chance finger prints lifted from the house of the deceased. On completing the investigation, PW-42 laid charge sheet against all the three accused.

3.22. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 42 witnesses were examined, 66 documents and 71 material objects were marked. Out of the said 42 witnesses, PW-1 to PW-4, who are the son-in-law, daughter, husband and a relative of D-1, have stated about the fact that all the three deceased were alone in the house. When they returned home, they found all the three deceased in a pool of blood. The hands and legs of D-1 and D-2 were tied with ropes. There were cut injuries on the dead bodies of the deceased. They have further stated that D-3, hardly aged about five years, was also lying in a pool of blood near the cot. There were cut injuries on her neck also. They have also stated that the gold jewels worn by D-1 and D-2 and the gold jewels kept in the steel bureau were found missing. Later on, they have identified MO-1 to MO-49 as the stolen gold jewels.

3.23. PW-5, a close relative of PW-1, has stated that he wrote EX-P1, complaint, as dictated by PW-1 and thereafter, PW-1 presented the same to the police. PW-6 yet another daughter of D-1 and PW-3. She has also identified the gold jewels - MO-1 to MO49 as the stolen properties. PW-7 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the recovery of material objects from the place of occurrence.

3.24. PW-8 is an important witness for the prosecution. He, the Finger Print Expert, has stated that as requested by the Investigating Officer, he visited the place of occurrence, on 28.12.2011 at 08.30 PM. When he thoroughly examined the entire house, he found six chance finger prints from the steel bureau from the house of the deceased. He marked the same as D-1 to D-6. According to him, he compared the finger prints of the deceased, but they did not tally with the chance finger prints lifted from the steel bureau at the house of the deceased. When he compared the finger prints of the habitual offenders kept in the finger prints bureau of Namakkal, he found the finger prints of the first accused tallied with the finger prints marked as D-1 and D-2. Thus, two chance finger prints lifted from the place of occurrence, according to this witness, tallied with the finger prints of the first accused.

3.25. Further according to him, on 11.01.2012, he compared the finger prints kept in the finger prints bureau of Karur District with the finger prints of the habitual offenders. The admitted finger prints kept on the said bureau of the second accused tallied with one of the chance finger prints

lifted from the place of occurrence, namely, D-6. Thus, according to him, the chance finger prints lifted from the place of occurrence tallied with the finger prints of the accused Nos.1 and 2. EX-P4 is the report for lifting the chance finger prints. EX-P5 is the report in respect of the comparison of the admitted finger prints of the first accused with the chance finger prints. EX-P7 is the report in respect of comparison of chance finger prints lifted from the place of occurrence and that of the second accused. He has also produced the enlarged photographs of the chance finger prints and the admitted finger prints.

3.26. PW-9 was examined to speak about the fact that MO-59 and MO-60, knives, recovered from the accused, were purchased from him by the accused. He has stated that he was not able to identify as to whether these two knives were purchased from him. Thus, the evidence of PW-9 is not, in any way, useful for the prosecution.

3.27. PW-10, Mr.Rengan, has stated that on 04.02.2012, the first accused was introduced to him by PW-13 and PW-14. The first accused was found in possession of the gold jewels. He wanted to pledge the same Since PW-13 and PW-14 were close to him, he took the first accused to the shop of one M/s.Suriyakumar Pawn Broker Shop and pledged some of the jewels. Thereafter, he pledged some of the jewels with one Ravi Metha - PW-17. He pledged another gold jewels to one Mr.Babu. He has further stated that these jewels were later on recovered on the disclosure statements made by the accused. Unfortunately, this witness was not called upon by the prosecution to identify the jewels, which were so pledged to him. His evidence is very vague.

3.28. PW-11 has stated that PW-10 came to him and wanted him to pledge a Simikki and three pairs of gold ear studs. He pledged the same at the shop of one Ravi Meta [PW-17] for a sum of Rs.20,000/- and he gave money to PW-10. Again, PW-13 gave some more jewels and he wanted to pledge the same. He pledged the same to one Chettiyappanur Ponnusamy. [This witness was also not called upon to identify the jewels]. His evidence is so vague. PW-12 has stated that one Mr.Mani, who is known to him for about 7 years, came to him, 10 months before and gave six gold jewels. He pledged the same at the shop of one Ramanthan @ Moorthy and he gave a sum of Rs.1,10,000/-. He has identified MO-19, MO-20, MO-6, MO-42, MO-47, MO-21 and MO-31 as the said jewels.

3.29. PW-13 has stated that the accused Nos.1 and 2 were known to him already. During the month of August 2011, the second accused called him over phone that he would send the first accused to him for selling the silver jewels weighing two kilograms. Accordingly, the first accused came and handed over the silver jewels, weighing two kilograms. He sold one kilogram to Vaniyampadi Vijaya Jewellery and he gave a sum of Rs.1,30,000/-. He has further stated that subsequently, again, the third accused called him over phone that he would send the first accused to him with gold jewels. Accordingly, the first accused came with MO-9, MO-12, MO-7, MO-13, MO-8, MO- 41 and MO-17, which he pledged and gave money to him.

3.30. PW-14, an auto driver, has stated that during the year 2011, in the month of October, when he was standing near Vaniyampadi Road, one Mr.Vimal and the first accused came to him. They took him to one Suriyakumar Pawn Broker Shop and pledged a Thali Chain and five rings for a sum of Rs.1,42,000/-. Unfortunately, this witness was also not called upon by the prosecution to identify

the said jewels.

3.31. PW-15, Mr.A.Suresh, a clerk in the Pawn Broker Shop at Vaniyampadi, has stated that he knew the first accused. PW-13 was also working with him. He has stated that the first accused came along with PW-13, who pledged 16 sovereigns of gold jewels for a sum of Rs.1,96,000/-. He has identified the said jewels as MO-12, MO-26, MO-27, MO-5 and MO-13.

3.32. PW-16 is the proprietor of Suriyakumar Pawn Broker shop. He has stated that in the month of October 2011, PW-13 came with 12 sovereigns of gold jewels and sold the same for a sum of Rs.1,42,000/- and received money. Again, in the December month of 2012, PW-13, PW-10 and one Mr.Vimal came and sold three gold necklace, four gold bangles and two gold rings, all weighing 16 sovereigns and he gave a sum of Rs.1,96,000/-, [MO-8, MO-41, MO-18, MO-17, MO-49, MO-26 and MO-27]. They have stated that they were later on recovered by the police. PW-17 has stated that during the Month of January 2012, one Mr.Mani came with PW-10 and wanted to pledge three pairs of gold ear studs, one pair of gold mottal and a pair of gold ear studs. He pledged the same for a sum of Rs.20,000/- and gave money to PW-10 and Mr.Mani. MO-47, MO-33, MO-34 and MO-11 are the said jewels.

3.33. PW-18 was a Goldsmith in the jewellery shop of one Thandapani. He has stated that PW-13 and PW-14 were known to him. He has stated that they came to him on 31.12.2012 and sold six gold bangles, one gold chain, one TV model gold ring, weighing 121/2 sovereigns. They received a sum of Rs.1,45,000/-. Again, on 18.01.2012, the police came and recovered the same.

3.34. PW-19 was running a Pawn Broker Shop under the name and style "Babulal Soudri". During the month of January 2012, it is stated that one Mani and PW-10 came to his shop and pledged a pair of gold Simikki and three pair of gold ear studs for a sum of Rs.18,000/-. They were all recovered by the police. They are MO-15, MO-22 and MO-48.

3.35. PW-20 is the Village Administrative Officer in whose presence, all the three accused made confessions to PW-42. He has further stated that from and out of the disclosure statements, the gold jewels were recovered from various persons. PW-21 has spoken about the arrest of the first accused by the Deputy Superintendent of Police, Namakkal. He has also spoken about the disclosure statement made by the first accused on 12.01.2012 and the recovery of MO-33, MO-14, MO-34, MO-11 and MO-32, which are all gold jewels.

3.36. PW-22 has turned hostile and he has not supported the case of the prosecution in any manner. PW-23 has spoken about the confession made by the third accused on 17.01.2012 to the Deputy Superintendent of Police, Namakkal and he has also spoken about the recovery of MO-25, MO-28, MO-29 and MO-30 from and out of the disclosure statement made by the third accused. PW-24 has spoken about the arrest of the accused Nos.1 and 2 by the Deputy Superintendent of Police, Namakkal in connection with a case in Crime No.1636 of 2011, on the file of the Namakkal Police Station; the disclosure statements made by them and the consequential recovery of MO-8, MO-41, MO-17, MO-18, MO-49, MO-26, MO-5, MO-12, MO-7, MO-27 MO-16, MO-15 and MO-22. He has further stated that from the accused Nos.1 and 2, MO-14, MO-20 and MO-42 were also recovered.

3.37. PW-25, the Head Clerk of the Court of learned Judicial Magistrate, has stated that he forwarded the material objects to the Forensic Lab for chemical examination. PW-26 has spoken about the autopsy conducted on the bodies of D-1 and D-2 and his final opinion regarding the cause of death. PW-27 has spoken about the autopsy conducted by him on the dead of D-3 and his final opinion regarding the cause of death.

3.38. PW-28 has spoken about the photograph taken by him at the place of occurrence from various angles, as directed by the Investigating Officer. PW-29 has stated that he handed over the complaint and the First Information Report to the Court, at 11.30 PM, on 28.12.2011. PW-30 to PW-32 have stated that they took the dead bodies of the deceased to the hospital and after autopsy was over, they recovered the bloodstained clothes from the dead bodies and handed over the same to the Investigating Officer. PW-33 has stated that he assisted PW-42 in the matter of investigation.

3.39. PW-34 has stated that the Deputy Superintendent of Police, Namakkal, has stated that he investigated the case in Crime No.1636 of 2011, on the file of the Namakkal Police Station, in connection with the said case. According to him, one B.Rengasamy, S/o.Balasubramani produced the third accused before him on 17.01.2012. On such production, he arrested him. He has further spoken about the disclosure statements made by the accused and the recovery of the stolen properties. He has further stated that on the same day, at 09.45 AM, he arrested the accused Nos.1 and 2 in connection with the said case. They have made independent confession disclosure statements, out of which recoveries of the material objects were made. He has further stated that from and out of the disclosure statements made by the first accused, MO- 8, MO-41, MO-17, MO-18, MO-49, MO-26 and MO-27 were recovered. Again, at 10.00 PM, in pursuance of the disclosure statement made by the first accused, MO-5, MO-7, MO-12 and MO-13 were recovered. He has further stated that on the same day, at 09.00 Am, out of the disclosure statement made by the first accused, MO-16 and MO-15 were recovered. According to him, he forwarded the first accused to the Court for judicial remand. The accused Nos.2 and 3 were interrogated by another Deputy superintendent of Police, by name Subramaniam.

3.40. PW-35, the then Deputy Superintendent of Police, Namakkal, has stated that he examined the third accused on 17.01.2012. He gave a voluntary confession, out of which MO-25, MO-25, MO-29 and MO-30 were recovered. Again, on the same day, at 03.15 PM, from and out of the disclosure statement made by the third accused, MO-21, MO-31, MO-23, MO-36, MO-9 and MO-35 were recovered.

3.41. PW-36, the Inspector of Police, has stated that he was in a Team, which investigated the case in Crime No.1636 of 2011, on the file of the Namakkal Police Station. He has also spoken about the confession statement made by the first accused. PW-37 has spoken about the registration of the case, on the complaint made by PW-1. PW-38 has spoken about the inquest held by him on the dead body of D-2, as instructed by the Investigating Officer. PW-39 has spoken about the inquest held on the body of D-3, as instructed by the Investigating Officer. PW-40, a Scientific Expert, has stated that he examined the bloodstained material objects and found human blood on all the material objects. PW-41, the Inspector of Police, has spoken about the initial investigation done by him. PW-42, the Deputy Superintendent of Police, Namakkal, has spoken about the further investigation

done by him and the filing of final report against all the three accused.

3.42. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. On their side, three witnesses, viz., DW-1 to DW-3, were examined. DW-1 is the father-in-law of the first accused. He has stated that on 18.01.2012, around 12.00 noon, the police came to the house of the first accused and took him into custody. He has further stated that from the house, the police took away a gold chain, weighing six sovereigns, another gold chain weighing one sovereign, a gold dollar, a gold ring and two baby gold rings. According to him, these jewels belonged to him. But, he has not identified any of the material objects marked in Court as the belonged to him.

3.43. DW-2 is the mother-in-law of the third accused. He has stated that on 18.01.2012, the police took the third accused from his house into custody and from her, some gold jewels were recovered. But, she has stated that those gold jewels belonged to her. But, she has not identified any of the gold jewels marked in Court as the properties belonged to her. DW-3 is the wife of the third accused. She has stated that the third accused was taken into custody by the police on 18.01.2012 and some of the gold jewels were received from DW-2. She has also not identified any of the gold jewels marked in Court as the properties belonged to her. Through DW-2, the bills for purchase of some gold jewels were marked. The defence of the accused was a total denial. Having considered all the above materials, the Trial Court convicted the accused Nos.2 and 3, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the second accused is now before this Court with this Criminal Appeal.

4. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

5. From the evidences of PW-1 to PW-3, it has been clearly established that on 28.12.2011, D-1 to D-3 alone were in the house of PW-3 and there was none else in the house. They were lastly seen at 02.30 PM by PW-1 and PW-2, when they left for Poolavasal village. When they returned home at 06.30 PM, they found all the three deceased in a pool of blood. The hands and legs of D-1 and D-2 were tied with ropes. There were cut injuries on dead bodies of the deceased. PW-1 and PW-2 noticed that their daughter, Karnika, D-3, hardly aged about five years, was lying in a pool of blood near the cot. There were cut injuries on her neck also. The doctors, who conducted autopsy on the bodies of the deceased, have stated that the death of each deceased was due to shock and hemorrhage due to the injuries. Thus, the prosecution has clearly established that the death of all the three deceased was a homicide and they were all killed some time between 02.30 PM and 06.30 PM, on 28.12.2011.

6. PW-1 to PW-3 have further stated that they found the jewels worn by the deceased and the jewels kept in the steel bureau and the almirah were all missing. They have identified MO-1 to MO-49 as the properties, which were either kept in the steel bureau or worn by D-1 and D-2. There is no reason to reject the evidences of these witnesses. From these evidences, it has been clearly established that in the same occurrence, in which all the three deceased were done to death in a gruesome manner, MO-1 to MO-49 were stolen away. Thus, it is inferable that the persons, who

committed robbery, have committed the murders of all the three deceased.

7. Now, the question is as to who are the perpetrators of the said crimes. The first and foremost circumstance relied on by the prosecution is the evidence of PW-8, the Finger Print Expert. He has stated that on 28.12.2011, around 08.30 PM, he visited the place of occurrence and examined the house of the deceased thoroughly. At last, he found six chance finger prints on the steel bureau and the almirah found at the house of the deceased. With the help of photographer, he took enlarged photographs of the chance finger prints and preserved the same. Thereafter, the finger prints of the deceased were compared with the finger prints lifted from the steel bureau. They did not tally. The finger prints of the habitual offenders kept in the finger prints bureau of Namakkal were compared by him. On such comparison, he found that two finger prints lifted from the place of occurrence tallied with the finger prints of the first accused.

8. Similarly, yet another chance finger print found at the place of occurrence tallied with the finger prints of the second accused. Then, PW-8 compared the finger prints of the habitual offenders kept in the finger prints bureau of Krishnagiri. He has produced the enlarged photographs of the chance finger prints and the admitted finger prints of these two accused. He has also given reasons for his conclusion. We find no reason to reject the evidence of PW-8. Thus, through the evidence of PW-8, it has been clearly established that the chance finger prints lifted from the steel bureau on the house of the deceased were that of the first accused and the other one chance finger print was that of the second accused. Neither the first accused nor the second accused has got any explanation for the same. [The first accused was not available for giving explanation, as he is no more]. The non-explanation for the presence of the finger prints of the second accused in the steel bureau of the house of the deceased is a very strong circumstance, which would go to prove that the second accused had entered into the house of the deceased, handled the steel bureau and stolen away the gold jewels.

9. Then comes the possession of the stolen properties. The third accused was arrested by the Deputy Superintendent of Police, Namakkal, in connection with a case in Crime No.1636 of 2011, on 17.01.2012. From and out of the disclosure statement made by the third accused, some of the stolen properties in the present case were recovered. [We have given the details of the properties recovered from the third accused in the earlier paragraphs]. From and out of the disclosure statement made by the third accused, the involvement of the accused Nos.1 and 2 came to light, and therefore, the accused Nos.1 and 2 were arrested on the same day by PW-34. On such arrest, the accused Nos.1 and 2 gave independent voluntary disclosure statements. Out of the disclosure statement made by the first accused, some of the properties connected to the case in Crime No.1636 of 2011, on the file of the Namakkal Police Station were recovered and some gold jewels, which are the stolen properties, in the present case were also recovered. Similarly, on the disclosure statement made by the second accused, the appellant herein, some properties connected to the case in crime No.1636 of 2011, on the file of Namakkal Police Station, were recovered and some properties connected to the present case were also recovered.

10. There is no reason to reject the evidence of PW-34, which is corroborated by the evidence of the Village Administrative Officer, who was an eye-witness for the disclosure statement made by the

accused and the consequential recoveries of the material objects. Thereafter, PW-42, the Investigating Officer came to know of all the three accused. The formal arrest of all the three accused in connection with the present case was made in the prison. They were all later on produced before the jurisdictional Magistrate and thereafter, they were taken into custody by the police. While in custody, all the three accused made independent disclosure statements. Out of the disclosure statement made by the first accused, many stolen properties were recovered. [we have discussed elaborately hereinabove about the details of the stolen properties]. Similarly, out of the disclosure statement made by the second accused, many more stolen properties [gold jewels] were recovered. [The details of the stolen properties have already been discussed]. From and out of the disclosure statement made by the third accused, some stolen properties were recovered. The recoveries of stolen properties, which are gold jewels from the possession of the appellant herein have been clearly established by the evidence of PW-42. We find no reason to reject the evidences of these witnesses. The properties recovered from these three accused, MO-1 to MO-49, have been duly identified by PW-2 and PW-3 as the stolen properties. We do not find any reason to reject these evidences.

11. But, the learned counsel appearing for the appellant would submit that DW-1 to DW-3 have stated that some gold jewels were taken away from their houses, which belonged to them. The attempt of these witnesses is that some of the properties belonged to them were taken by the police and put up as the stolen properties in the instant case. But, unfortunately, their evidences are so vague and they have not identified any of the properties marked in evidence as the properties belonged to them. They have not made any claim that all the material objects, viz., MO-1 to MO-49 belong to them. Thus, the evidences of DW-1 to DW-3 would not, in any manner, cause any doubt in the recoveries of the stolen properties from the possession of these accused. The fact remains that these properties were either sold or pledged through third parties, like PW-10 to PW-19. They are all independent witnesses. Since the appellant/the second accused has got no explanation as to how he came to possess some of the stolen properties, soon after the commission of theft, the presumption, which arises out of the same, is that he was one among the perpetrators of the crime, who committed the gruesome murders of all the three accused and robbery. Thus, in our considered view, the prosecution has clearly established the guilt of the second accused and thus, there is no reason to interfere with the said findings of the Trial Court.

12. Now, turning to the quantum of punishment, in our considered view, the Trial Court had miserably failed to examine as to whether imposing life sentence on the appellant would be inadequate going by the gravity of the offences committed and the mitigating circumstances. For a moment, we do not say that this is a fit case, where the Trial Court ought to have imposed death penalty on the appellant and the other accused. We only say that the Trial Court had failed to examine the said question while deciding to impose the punishment. Imposing punishment is an important judicial function of the Trial Court, which is also a difficult task. The Court is expected to weigh both the aggravating as well as the mitigating circumstances. The Law on the subject of death penalty has been dealt with in several cases, including the most celebrated Constitution Bench Judgment in Bachan Singh Vs. State of Punjab [1982 (3) SCC 24]. The consistent view taken by the Hon'ble Supreme Court is that failure to impose quantum of punishment will amount to failure of justice. The perpetrators of the crime deserve to be punished with adequate punishment and not

either with lesser punishment or with excessive punishment, which would be disproportionate. The measure is in the hands of the Court. The Court should take into account all the mitigating as well as the aggravating circumstances to assess as to what is the quantum of punishment that would be appropriate.

13. In the instant case, a perusal of the Judgment of the Trial Court would go to show that the Trial Court had not examined the issue relating to the quantum of punishment with required attention. In a mechanical fashion, the Trial Court has imposed life sentences for all the three accused. Neither the prosecution nor the family members of the deceased have filed any appeal, seeking enhancement of the sentences. Though the murders are gruesome in nature, where three precious lives, including that of a five year old child, have been snatched away by these accused, we are unable to examine the said question in the appeal filed by the accused against conviction. Thus, we are virtually disabled by the prosecution from going into the adequacy of the sentences. Therefore, we are impelled to confirm the punishment of imprisonment for life imposed on the appellant/the second accused by the Trial Court.

14. In the result, this Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant/second accused, vide Judgment dated 10.03.2014, made in S.C.No.18 of 2012, on the file of the learned Principal Sessions Judge, Karur is confirmed.

To

- 1.The Principal Sessions Judge, Karur.
- 2.The Deputy Superintendent of Police, Karur Sub-Division, Karur District.
- 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..