

(1995) 01 MAD CK 0060

Madras High Court

Case No: Criminal Appeal No. 11 of 1987

Govindaraj

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision: Jan. 10, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173(2), 302, 313, 380
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 201, 302, 392, 397

Citation: (1995) CriLJ 2383

Hon'ble Judges: Thangamani, J; Janarthanam, J

Bench: Division Bench

Advocate: A.S. Chakravarthy, for the Appellant; R. Ragupathi, Assistant Public Prosecutor, for the Respondent

Judgement

Janarthanam, J.

The appellant was the accused in S.C. No. 111/1985 on the file of Court of Session, Thanjavur West. He was found

guilty under Ss. 302, 392 and 201, IPC, convicted thereunder and sentenced to imprisonment for life for the offence under S. 302, IPC, besides

sentencing him to rigorous imprisonment for five years and a fine of Rs. 500/-, in default to rigorous imprisonment for six months for each of the

other offences, with a direction for the substantive sentences to run concurrently. Aggrieved by the said conviction and sentence, the present action

had been resorted to.

2. Brief facts are :-

(a) One Pattammal (since deceased).

a widow, hailing from affluent circumstances had been living all alone in her house situate at West Street, Thanjavur. At the time of her death, she

was at the ripe old age of 80 years. She was blessed with two daughters and they were happily married. They, on their marriage, as birds of

passage in the journey of life, migrated and took shelter in their respective husband's houses, leaving their mother the deceased all alone. One of

her daughters came to reside with her husband at Bombay and another at Delhi.

(b) The deceased, being in affluent circumstances and also belonging to the yester generation, was always wearing jewels on her person. She used

to wear diamond studs, besides wearing gold chain on her neck; adorning her hand with gold bangles and nose with nose screws. She was quite

conscious on her loneliness and therefore, she took precautions of locking the outer door of the house always, unless and until an occasion arose

for opening the same.

(c) During night hours, one Subramaniam alias Malayalam (P.W. 9) and one Subramaniam Sastri alias Veppillai Sastri (whose daughter is

Yogambal - examined as P.W. 12) took their beds in the pial of the house of the deceased, so as to provide security to her. This apart, P.W. 9

rendered assistance to the deceased in procuring milk at the early hours of the morning every day and placing it at the window sill so that the same

could be taken by the deceased on her waking up.

(d) The deceased had engaged a servant-maid by name Nagalakshmi, whose mother is one Kuppammal (P.W. 14). The said servant-maid used

to come to the house of the deceased to attend to odd jobs of the household and be of assistance to the deceased between 8 and 10 a.m.

everyday. She would complete her work by 10 a.m. and return to her house thereafter.

(e) One Kasiammal (P.W. 13) had been doing scavenging work in the house of the deceased. She used to come and finish the cleansing operation

of the toilet between 8 ad 8-30 a.m. everyday.

(f) Though the deceased was living all alone, her pangs of separation from her kith and kin was offset by her grandchildren-either from Bombay or

Delhi making sporadic visits on her and staying with her for sometime. P.W. 15, one of her grandsons employed in Industrial Development Bank of

India at Bombay, along with his wife, P.W. 16 came to the house of the deceased, as usual on 23-12-1984 for spending sometime with her.

During their visit, they were able to see the deceased in the same old fashion of her being bedecked with Jewels always.

(g) P.W. 11 is the Gurukkal of Arulmighu Kamakshiammann temple. He is possessed of licence to attend to fuse calls. He is very well acquainted

with the family of the deceased. He also used to attend to fuse calls emerging from the house of the deceased. It so happened that he got

acquainted with the accused, a carpenter by profession.

(h) Sometime prior to the occurrence, which event happened on 11-1-1985, the deceased sought for the assistance of P.W. 11 to procure some

good carpenter for putting up a door to the crashed and attend to other carpentry work in her house. He, in turn, introduced the accused to the

deceased and the accused attended to the carpentry work available in the house of the deceased. Ever since then he also came to be acquainted

with the deceased, and he, utilising such acquaintance, used to call on her off and on at time.

(i) P.W. 1, a tailor by profession, had been running his tailoring shop near the house of the deceased. Likewise, P.W. 2 had been running a

tailoring shop in the crashed of the deceased and sometime prior to the occurrence, he vacated the said shop. P.W. 4 had been running a coffee

stall in a portion of the house belonging to the deceased. P.W. 3 is a neighbour of the deceased. In view of the acquaintance P.Ws. 1 to 4 had with

the deceased, they were all aware of the life led by the deceased. All of them had seen the deceased always wearing lot of jewels on her person

and also had the occasion to have seen the accused visiting the house of the deceased for the purpose of doing some carpentry work.

(j) Opposite to the house of the deceased, there is a Market Committee, in which P.W. 5 had been employed as an Office Assistant. Adjacent to

the said Market Committee, there is a grocery shop belonging to P.W. 10. On the day of the occurrence, while P.W. 10 was in his grocery shop

at about 10-30 a.m., he had the fortuitous opportunity of witnessing the accused having parked his cycle in front of the house of the deceased and

entering into her house. After being inside the house for about 45 minutes ,the accused, he would say, went out of the house of the deceased.

(k) Immediately thereafter, that is to say, at about 11-30 a.m. cloud of smoke emerged from the house of the deceased. On such emergence of

smoke from the house of the deceased, P.Ws. 1 to 5, 10 and others congregated in front of the house of the deceased, suspecting some foul play

having happened. P.W. 5 contacted P.W. 6 Fireman over phone as respects suspicious emergence of smoke from the house of the deceased.

P.W. 6, in turn, recorded the telephone message, Exhibit P. 2 and intimated P.W. 7 Fire Officer and on receipt of the information from P.W. 6 at

11-45 a.m. P.W. 7 rushed and reached the scene and after inspecting the scene, he prepared Exhibit P. 3 inspection report. P.W. 7 also intimated

the same over phone to P.W. 25, Sub Inspector of Police, Thanjavur West Police Station.

(l) On receipt of information, P.W. 25 rushed and reached the scene and recorded Exhibit P. 1 from P.W. 1 and then returned to the police station

and registered on the strength of Exhibit P. 1, a case of death under suspicious circumstances, in Crime No. 71/75. Exhibit P. 13 is the printed

FIR.

(m) P.W. 29 is the Inspector of Police (Law and Order), Thanjavur West Police Station. At 12-05 p.m., he received information over phone, as

respects the occurrence from P.W. 25. He immediately rushed to the Police station and took up further investigation of the case at 1-05 p.m. He

rushed and reached the scene of occurrence. He inspected the scene and at 1-15 p.m., he prepared Exhibit P. 4 observation mahazar attested by

P.W. 8. He drew a rough sketch of the scene, Exhibit P. 24. Then, he held inquest over the body of the deceased between 1-15 and 5 p.m.

During inquest, he examined P.Ws. 1 to 3 and others. Exhibit P-25 is the inquest report. Immediately after the inquest was over, he despatched the

body of the deceased through the constable P.W. 26, along with the requisition. Exhibit P. 14 for the purpose of autopsy. At 5-15 p.m., he

recovered from the scene kerosene oil tin (M.O. 1), burnt match stick (M.O. 7) match box with sticks (M.O. 8), eversilver pan with utensils

(M.O. 9 series), eversilver vessels with cap (M.O. 10 series), aluminium filter plate (M.O. 11), Kerosene bottle with the funnel (M.O. 12),

Kerosene bottle without lid. (M.O. 13) burnt white cloth (M.O. 14), burnt ashes of cloth (M.O. 15), burnt jacket bit (maroon colour M.O. 16),

burnt jacket bit (brown colour M.O. 17), jacket bit (cowdung colour M.O. 18), bloodstained jacket bit cred colour M.O. 19) and a plastic lid

with partially burnt cloth (M.O. 20) under Exhibit P. 5 mahazar attested by P.W. 8. He then examined P.Ws. 4, 5 and 8 to 12.

(n) P.W. 27 is the Professor of Forensic Medicine attached to Thanjavur Medical Hospital. On receipt of requisition from P.W. 29, he held the

autopsy over the body of the deceased at 12-15 p.m., on the next day, i.e., on 12-1-1985. Exhibit P. 15 is the post mortem Certificate, he issued.

Exhibit P. 17 is his final opinion, based upon the report of the Chemical Examiner, Exhibit P. 16. He would opine that the deceased died of

homicidal violence of her being throttled to death and the burns he had found on the person of the deceased had been caused subsequent to her life

having become extinct. Exhibit P. 18 is his notes.

(o) After the autopsy was over, the Constable, P.W. 26 seized from the body, gold ring (M.O. 2), imitation (silver) ring (M.O. 3), white bra

(M.O. 29), burnt saree (green colour M.O. 30), burnt skirt (blue colour M.O. 31), burnt woollen banian (green colour M.O. 32), burnt banian

cloth (white colour M.O. 33) and burnt jacket (purple colour M.O. 34) and handed over them at the police station and all of them had been seized

under Form No. 95.

(p) On 21-1-1985, P.W. made a complaint, Exhibit to P.W. 29, as respects the missing of items of jewels and other articles from the house of the

deceased, his grandmother. P.W. 29, on receipt of such a complaint and also the receipt of the copy of the post-mortem Certificate from P.W. 27,

altered the case into one under Ss. 302 and 380, IPC and prepared the express reports and sent the same to the concerned officials. Exhibit P. 26

is the express FIR. On 27-1-1985, he examined P.Ws. 15 and 16, besides the servant maid Nagalakshmi. On 2-2-1985, he went on leave and

consequently, further investigation of the case had been taken over by P.W. 30.

(q) On 10-2-1985, at about 9-30 a.m., P.W. 30, on prior information as respects the availability of the accused near a rice mill located at

Vadaseri Udhayasooriyan Road, Pattukkottai, rushed and reached there at 1-30 p.m. and arrested the accused, in the presence of P.W. 17. On

interrogation, the accused gave a confessional statement under S. 27 of the Evidence Act, the admissible portion of which is Exhibit P. 7. Pursuant

to the said confession, the accused took P.W. 30 and P.W. 17 to Kulichappattu Village and pointed out P.W. 18, his son, from whom, diamond

earrings (one Pair-M.O. 4 series), a gold chain (M.O. 5), a sovereign dollar (M.O. 6), 75 hundred rupee notes (M.O. 21 series), Canara Bank

Passbook (M.O. 22) and jewellery shop receipts (MOs. 23, 27 and 28) has been recovered at 7-40 p.m. under the cover of mahazar, Exhibit P.

8. On the same day, he examined P.W. 22 who pledged and redeemed her jewels from the accused. On the next day, that is to say, on 11-2-

1985, he examined P.W. 21, appraiser and P.W. 23, with whom, the accused pledged and redeemed jewels. P.W. 21 opined that the stones

embedded on M.O. 4 are diamond stones and the said opinion is Exhibit P. 12.

(r) On the next day at 10-15 a.m., the accused took P.W. 50 to Thanjavur and pointed out P.W. 19 a Jewellery shop owner, from whom a gold

ingot weighing 10 grams and 300 ml. gr. (M.O. 24) had been recovered under Mahazar, Exhibit P. 9. At 11 a.m., he pointed out P.W. 20,

another jewellery shop owner, from whom a gold ingot weighing 22 grams (M.O. 25) had been recovered under Exhibit P. 10 mahazar. At 11-45

a.m., the accused pointed out one Govindasamy Sheriff, from whom two gold ingots weighing 45 grams (M.O. 26 series) had been recovered

under Exhibit P. 11 Mahazar. Exhibits P. 7 to P. 11 were attested by P.W. 17 and another. P.W. 30 then took the accused to Thanjavur West

Police Station and reached there at 12-30 p.m. He kept him in the police lock up at the police station for sometime. He then sent the accused to

Court for remand.

(s) Since the accused was in a mood to confess the crime, P.W. 30 sent Exhibit P. 19 requisition on 11-2-1985 to the Judicial Second Class

Magistrate, Orathanadu for recording his confessional statement. P.W. 28, then Magistrate, on receipt of Exhibit P. 19 requisition on 12-2-1985

sent an intimation to the Superintendent, Sub Jail, Thanjavur on the same day requiring him to produce the accused on 13-2-1985 at 3 p.m. On

13-2-1985, the accused had been produced before P.W. 28 at 3-10 p.m. After observing the requisite formalities and administering necessary

and requisite warnings to the accused, P.W. 28 ascertained from the accused as to whether he was in a position to confess the crime voluntarily.

The accused was, however, willing to make a voluntary confessional statement. The Magistrate, P.W. 28 did not, however, record the confession

immediately; but, he gave the accused time for reflection for about twenty four hours and sent him to judicial custody, with a requisition for his

production the next day, that is to say, on 14-2-1985 at 3-45 p.m. Exhibit P-20 is the first day's proceedings.

(t) On the next day, the accused had been produced and after creating conducive atmosphere and repeating the necessary warnings, as had been

done the other day, the Magistrate, P.W. 28 again ascertained the wish of the accused as to whether he was in a position to confess the crime

voluntarily. The accused was, however, willing to make a statement voluntarily. Consequently, he recorded the confession of the accused, as

narrated by him. After completing the confessional statement, he also appended the certificate, at the foot of the said confession. Exhibit P. 22 is

the confessional statement. Exhibit P. 23 is the Certificate appended by the Magistrate, P.W. 28 to the said confession, Exhibit P. 22.

(u) On 8-5-1985, P.W. 30 examined P.W. 24, a clerk in Canara Bank, Thanjavur, in which the accused was having an account No. 9834 - the

passbook of which is MO. 22. After completing the formalities of the investigation, P.W. 30 laid the final report under S. 173(2) CrI. P.C. On 8-

5-1985 before the Judicial Second Class Magistrate, Thanjavur, for the alleged offences under Ss. 302 and 392 read with S. 397, IPC.

3. On committal, learned Sessions Judge, West Thanjavur on 7th October, 1985, framed the following charges against the accused :

Firstly, under S. 302, IPC; and

Secondly, under S. 392 read with S. 397, IPC.

4. The accused, when questioned as respects those two charges, pleaded guilty to the same.

5. On 16-9-1986, learned Sessions Judge, West Thanjavur framed a fresh charge under S. 201, IPC.

6. The accused, when questioned as respects the charge so framed, pleaded not guilty and claimed to be tried.

7. In proof of the charges so framed, the prosecution examined P.Ws. 1 to 30, filed Exhibits P. 1 to P. 26 and marked MOs 1 to 34.

8. The accused, when questioned as respects the incriminating circumstances appearing in evidence against him, denied his complicity in the crime.

He, however, did not choose to examine any witness on his behalf.

9. Learned Sessions Judge, on consideration of the materials placed and after hearing the arguments of learned Counsel for the accused as well as

learned Public Prosecutor, recorded the conviction and sentence, as stated above.

10. Arguments of Mr. A. S. Chakravarthy, learned Counsel for the appellant accused and Mr. R. Raghupathi, learned Additional Public

Prosecutor were heard.

11. The sole and lone point that crops up for consideration is as to whether the conviction and sentence, as had been imposed upon the appellant-

accused by the Court below are sustainable, on the facts and in the circumstances of the case.

12. Admittedly, the case of the prosecution hinges upon the evidence, not direct, but only circumstantial in the shape of the judicial confession

made by the appellant accused and other incriminating pieces of circumstances, serving as a corroborative support, in a general way to the judicial

confession. The incriminating circumstances, which lend corroborative support to the judicial confession consist of

(1) Medical evidence available on record;

(2) Absconding of the accused, on and from the date of the commission of the murder of the deceased;

(3) Subsequent arrest, confession and consequent recovery thereof;

(4) The impecunious circumstances, in which the accused had been placed and unable to support the members of his family;

(5) The accused having been seen entering into the house of the deceased, sometime prior to the occurrence, whilst the deceased was alive and coming out of the house, after being inside for about 45 minutes and thereafter, a cloud of smoke, emerging from the house of the deceased, creating a lurking suspicion; and

(7) The deceased being seen immediately thereafter and the Fire Service Personnel summoned to the scene and the neighbours of the deceased, who have been examined as witnesses, having had the fortuitous opportunity of seeing the deceased lying on the floor dead with symptoms of burns on her person.

13. Before ever the judicial confession is to be acted upon, it behooves upon the Court to come to the conclusion that such a confession is not only voluntary, but also true and reliable. The determination of the question of truth, and reliability of the confession can come into picture only when the court comes to the conclusion that the confession is the resultant product of voluntariness. To put it otherwise, if the confession, as having been recorded by the court, points out that the same is involuntary, the other question; relating to truthfulness and reliability will not at all fall for consideration. The net result, in such an eventuality, is that such a confession has to be eschewed out of consideration. If the confession is eschewed out consideration, then the further question of seeking corroborative support, in a general way for the confession to be acted upon, will not at all arise for consideration. In such a situation, the Court has to decide whether the other established circumstances are such as to point out that the accused and him alone and none-else could have committed the heinous crime of murder. Until then, no criminal liability can be mulcted or fastened upon the accused.

14. With the backdrop of the principles, as stated above, let us delve deep into the materials available on record in the case to find out as to whether the confession given by the accused can be acted upon as being voluntary, true and reliable.

15. P.W. 30, Inspector of Police sent the requisition, Exhibit P. 19 to P.W. 28, the Judicial Second Class Magistrate, Orathanadu on 11-2-1985

to record the confessional statement of the accused. The accused was then found to be in a mood to confess the crime. P.W. 28, in turn, on receipt of the said requisition on 12-2-1985, sent an intimation to the Superintendent, Sub Jail, Thanjavur requiring his production before him at 3-00 p.m. on 13-2-1985. The accused had been accordingly produced before him at 3-10 p.m. It is not as if the accused had been produced by any police personnel connected with the investigation in this case. Admittedly, as seen from the evidence of P.W. 28, the accused had been produced by the Head warder Manickam and another Warder by name Ramu. The Magistrate, P.W. 28 also created a conducive atmosphere, by removing all persons from Court hall. Excepting himself, his bench clerk and office assistant, besides the accused, none was available inside the Court hall and the doors and windows of the Court hall had also been closed. He disclosed his identity to the accused that he was a Magistrate and the accused was before court. He administered the necessary warnings and cautions and also put questions to find out whether he was under any police influence, threat or coercion. To the questions put to the accused as to any inducement, threat or coercion emerging from the police, the accused would give a categorical answer that no such inducement, threat or coercion emerged from any quarter whatever, much less police to make a confession before the Court. The accused was also made to understand that there was no need for him to make a confession and if he did make a confession, the same would be used against him and there was every reason of his being convicted and sentenced on the confession so made. The accused was also enquired as to whether he decided to make a confession, after knowing the pros and cons of the situation. After the administration of all these warnings and cautions and the other questions put, the accused expressed his willingness to make a confession, as respects the occurrence. The Magistrate, P.W. 28 did not, in a hurly-burly fashion, started recording the confession. What he did was that he gave him time for reflection for about 24 hours and he was asked to be produced the next day at 3-45 p.m., i.e., on 14-2-1985.

16. Accordingly, he had been produced by one Nagarajan and another Sridhar, Warders attached to the Sub Jail, Thanjavur. Again he repeated

the administration of the warnings, cautions and other questions he had put to the accused the earlier day. That apart, he had also specifically put questions to him as to whether he was contacted by any police personnel during the period of time for reflection and made any inducement or threat to make a confession. To such a question, he had also answered that no such thing had happened and after deriving the solidified satisfaction that the accused was a free man and without any sort of a coercion or compulsion from whatever quarter, he was willing to make a confession, started recording his confession and the accused also made a clean breast of the occurrence. After completing the narration, as given by the accused, he also appended a certificate at the foot of the confession. The Administration of the warnings, cautions and other questions put, as stated above, are getting reflected in the first and second days" Proceedings, namely, Exhibits. P. 20 and P. 21. The confession, Exhibit P. 22 is also appended with the certificate, Exhibit P. 23. In such circumstances, we are satisfied that the confession, Exhibit P. 22 made by the accused to the Judicial Second Class Magistrate, Orathanadu, P.W. 28 is voluntary.

17. The contents of the confession, Exhibit P. 22 can be looked into for the determination of the other question of truth and reliability, in the light of the other Materials available on record, on the touchstone of probability.

(a) The confession statement of the accused reveals that he hails from Kutichampattu and had settled at Thanjavur. He is blessed with three sons and three daughters. His wife expired some seven years prior to the occurrence. He was placed in impecunious circumstances, in the sense of not being in a position to support the large members of his family by his earnings. He, somehow or other, managed to arrange for the marriage of his three daughters.

(b) In the course of his profession as a carpenter, he had somehow or other developed acquaintance with the deceased through P.W. 11 and he had the fortuitous opportunity of doing some carpentry work in the house of the deceased; but in the course of doing such work he developed a very good contact and acquaintance with the deceased. Using such acquaintance, he had been very often calling upon the deceased. The factum of

the accused very often calling upon the deceased is also known to the neighbours and others, namely, P.Ws. 1 to 4 as well as P.W. 10 a grocery shop owner.

(c) On the morning of the day of the occurrence, at about 10 or 10.30 a.m. the accused had been to the house of the deceased in his bicycle. The

day of his visit was on the eve of Pongal. He appeared to have demanded some money from the deceased just for the purpose of doing Pongal

Seervarisai to his married daughters. On the emergence of a demand for payment of money to him, the deceased did not appear to heed at all and

such sort of a behaviour on the part of the deceased irritated the accused.

(d) Consequently, the pettifog minded accused, thinking that the deceased would not at all lend her helping hand to him in making certain payment

to enable him to do Pongal Seervarisai to his married daughters, thought of doing away with the deceased. He suddenly sprang upon the deceased,

throttled her neck and the deceased fell on the table motionless. Then, she had been placed on the floor and the life in her having become obviously

extinct, the accused removed the jewels she was wearing, namely, chain on her neck, bangles on her hand, stud on her ears and other jewels.

(e) After the removal of such jewels, while he was returning from the said house, he found kerosene tin (MO 1) found placed on the table and in a

flash of a moment, it stuck him to pour the available kerosene from the said tin on the person of the deceased and took the match box available

there and lighted the match stick to the body of the deceased with the result, there was engulfing of flames, by emergence of smoke. The accused

thereafter went away from there.

18. The factum of entry of the accused into the house of the deceased some time prior to the occurrence and his emerging out of the house, on

being inside for about 45 minutes was noticed by P.W. 10, grocery shop owner. No doubt true it is that he would state that if he was sitting insider

in the cash counter in his shop, there would not have been any possibility for him to have seen the entry into and emergence out of the house of the

deceased by the accused on the date and time in question. But the question is whether he was seated inside the shop at the cash counter there. The

plain fact is what he would say, is that at that time, the servant boy employed in the shop was not available and he was alone available in the shop

and since he was not at the relevant point of time sitting in the cash counter, he had the fortuitous opportunity of seeing the accused making an entry

into and emerging out of the house of the deceased at or about the time of the occurrence. P.Ws. 1 to 4 also would assert and state that smoke

emerged from the house of the deceased then and on suspicion, when an entry had been made into the house by the Fire Service Personnel P.Ws.

6 and 7, it was noticed that the deceased was lying dead with symptoms of her being set fire to.

19. The body of the deceased had been subjected to post mortem to find out the cause of death. Appearances found during the course of autopsy

were noticed as follows :

The following areas are burnt and charred with soot deposition.

Face, eye-brows, eyelashes, neck, scalp, chest wall. Front and inner aspect of right arm, forearm and head. Left hand forearm. Anterior

abdominal wall. Burns over both legs, foot, right thigh and left thigh perineum, vagina, lower abdomen, Black and charred.

Burns over back of the body.

The surrounding burnt areas do not show any colour changes.

The following factors were also noticed, during the course of autopsy.

Subcutaneous contusion with haematoma of irregular shape and size present over root of neck and medial end of both collar bones, Right collar

bone and the 1st rib (R) Fracture at the inner and left collar bones and 1st rib (L).

Fracture at the junction of the manubrium sternum body of sternum with underlying soft tissues contusion. Fracture 2nd to 7th rib on the right side.

Fracture 2nd and 3rd cervical vertebra. All the fractured areas shows surrounding blood clot in the vicinity of the fractured area. Contusion left

supra clavicular region. Subcutaneous contusion over back of both hands on the lateral aspect covering ring and little finger. Scalp : Loss of hair

due to burns. Eye Lids : Closed and lashes burnt. Tongue : Protruded. Ears : burnt with soot deposition. Haemathorax : right side superior

mediastinal contusion with haematoma surrounding tissues.

20. The doctor, P.W. 27, on the basis of the findings of the post mortem and on the basis of the report of the Chemical Examiner, expressed the final opinion under Exhibit P-17 that the deceased would appear to have died of cumulative effect of haemorrhage and shock and obstruction to air passage. He would further opine, in his evidence, that the burn injuries he found on the person of the deceased could have been caused only subsequent to her death and the reason he would give was that there was no blebs on the person of the deceased and if the burn injuries had been caused at the time when she was alive, there was every possibility of the blebs being found on her person. Further, the reason he would give was, there was no deposit of smoke either in the wind pipe or at the lungs. Therefore, he was categorical enough to say that the deceased could have been done to death by throttling and thereafter, her body could have been set fire to, resulting in symptoms of burns on her person being found. Thus, the medical evidence available on record lends a corroborative support to the confessional statement of the accused.

21. The further lending assurance factor is that the accused was absconding and he happened to be arrested only on 10-2-1985 long subsequent to the occurrence. This apart, on his arrest, he gave a confession under S. 27 of the Evidence Act the admissible portion of which had been marked as Exhibit P. 7, which led to the recovery of certain jewels of the deceased, M.Os. 4, 5 and 6 from his son, P.W. 18. The recovery had been effected under Exhibit P. 8 attested by P.W. 17. No doubt true it is that his son, P.W. 18 turned hostile wholesale and the evidentiary value attached to his evidence is practically nil and therefore, no reliance is placed upon his testimony.

22. However, there is the clinching testimony of P.W. 17, coupled with the testimony of P.W. 30, Inspector of Police for the recovery effected from P.W. 18 and in such stage of affairs, recovery effected from P.W. 18 can very well be acted upon. The further clinching factor is that the grandson of the deceased, P.W. 15 and his wife, P.W. 16, identified M.Os. 4 to 6 as the jewels of the deceased.

23. This apart, certain other jewels said to have been removed by the accused, as stated in his confessional statement, from the person of the

deceased, on the date of the occurrence, had been disposed of to jewellers, like P.Ws. 19 and 20 and from them, as being pointed out by the accused, the gold ingot of the jewels said to have been sold to them had been recovered, as earlier referred to in the narration of facts. Certain of the jewels had been disposed of by the accused to P.Ws. 19 and 20 on 12-1-1985 and the accused received the requisite cash for the disposal of those jewels from them.

24. It is at this juncture, we have to take into account, the evidence of P.W. 24, employee of Canara Bank. Thanjavur. He would say that the accused had been maintaining account in their bank, No. MO 22 is the passbook issued to him. A verification of the pass book, Exhibit P. 22 would reveal, in a clinching fashion, the indigent circumstances, in which he was placed prior to the commission of the offence of murder, in the sense of the bank balance in the passbook reflecting at times even below Rs. 10/- and not having the maximum balance of Rs. 200/-. But subsequent to the occurrence, his bank balance had swelled on 25-1-1985 to Rs. 4,500/- and on 5-2-1985 to Rs. 7,500/-.

25. The testimony of P.Ws. 22 and 23 would also indicate the impecunious situation the accused had been placed prior to the date of the commission of murder of the deceased. P.W. 22 pledged certain jewels to the accused in the month of Karthigai, that is to say, November December, a few months prior to the occurrence. It is not as if, he was having fluid cash resources to pay the money demanded by P.W. 22 and what he did was he pledged the jewels with P.W. 23 and raised a loan of Rs. 400/- and such a pledge had been redeemed subsequent to Mattu Pongal, that is to say, subsequent to the occurrence. This also indicates the financial position of the accused prior and subsequent to the date of the occurrence.

26. There was very opportunity and motive for the accused to commit the murder of the deceased. As already indicated, he had developed acquaintance with the deceased, by doing certain carpentry work in her house, by being introduced by P.W. 11, with the acquaintance he had developed with the deceased, a widow living all alone in the house, he went to the house of the deceased at or about 10 or 10-30 a.m. on the date

of the occurrence. The deceased had a set pattern of life. She was sleeping in the house all alone during night hours and ably assisted by P.W. 11

and one Veppillai Sastri father of P.W. 12 by keeping watch during night hours by having their beds in the pial of the house of the deceased. P.W.

11 was also assisting her in procuring milk at the early morning hours of the day and placing the milk in the window sill of the house of the

deceased, so that the same could be taken by the deceased on her waking up from sleep in the morning.

27. The deceased was also having a servant maid by name Nagalakshmi and she used to come and assist her in her household work and finish off

the day's work before 10 a.m. everyday and used to leave the house, thereafter. A scavenger, P.W. 13 Kasiammal used to come everyday

between 8 and 8-30 a.m. for cleaning the toilet. On the day in question, as usual, P.W. 13 came to the house of the deceased at about 8 or 8-30

a.m. for cleaning the toilet and went away. As usual, the servant maid Nagalakshmi, after finishing her work went away from the house of the

deceased.

28. The pattern of life the deceased had was very well known to the accused and that perhaps was the reason for him to have entered into the

house of the deceased at about 10 or 10-30 a.m. On the morning of the day of the occurrence. Utilising, the loneliness of the deceased the

accused appeared to have committed the daredevil act of throttling her to death and setting fire to her body by pouring kerosene to make it appear

as if she died of some accidental fire.

29. No doubt true it is that the servant-maid Nagalakshmi had not at all been examined; but only her mother P.W. 14 had been examined. The

reason for her non-examination was that subsequent to the occurrence, she became mad and the fact that she had become mad subsequent to the

occurrence had been testified by her mother, P.W. 14 and no question was put to her during the course of her examination to suggest that the said

Nagalakshmi was not at all suffering from madness or any kind of mental illness and the reason given for her non-examination was not proper. This

apart, the Investigating Officer P.W. 30 testified to the aspect of the said Nagalakshmi suffering from the malady of mental illness. Therefore, the

non-examination of the said Nagalakshmi cannot be stated to have created any irreparable dent in the case of the prosecution.

30. Thus, the confessional statement of the accused received ample corroboration in a general way, as indicated above, thereby pointing out the

truthfulness and reliability. Further, the entirety of the confession, as narrated by the accused does not tend to appear to be not reflecting the reality

of the situation, on being tested on the anvil of probabilities and surrounding facts and circumstances of the case.

31. These things apart, despite the fact that the confession Exhibit P-22 had been made before P.W. 28 on. 14-2-1985, the accused, when

questioned on 7th October, 1985, as respects the framing of the charges under Sections 302 and 392 read with S. 397, IPC by learned Sessions

Judge, West Thanjavur, would simply admit the offences without raising his little finger, and he would not demur anything as to his retraction of his

confession made before the said Magistrate. Only when he was examined on 16-9-1986 as respects the framing of the charge under S. 201, IPC,

he would deny the same and pleaded not guilty and claimed to be tried. For the first time, during the course of his examination under S. 313,

Cr.P.C. he would resile from what he had stated in the confessional statement under Exhibit P. 22.

32. From what has been stated above, it is thus crystal clear that there is ample evidence, in the shape of judicial confession - voluntary, true and

reliable - corroborated in general particulars by very many incriminating circumstances pointing out that it was the accused and him alone who

committed the dare devil act of heinous offence of murder of the deceased and committing robbery of jewels of the deceased, besides committing

the offence under S. 201, IPC, with a view to screen the commission of the offence of murder.

33. In this view of the matter, the conviction and sentence, as had been imposed upon the appellant accused by the Court below, for the offences

under Ss. 302, 392 and 201, IPC, cannot at all be stated to be not sustainable in law. Further, the sentences imposed upon the appellant-accused

by the Court below for the offences under S. 392 and 201, IPC cannot be stated to be either harsh or severe calling for interference. That apart,

the sentences, imposed upon the appellant-accused for those offences had been ordered to run concurrently, along with the sentence of imprisonment for life for the offence under S. 302, IPC.

34. The appeal therefore deserves to be dismissed and the same is accordingly dismissed, by confirming the conviction and sentence, as had been done by the Court below, for the offences under Ss. 302, 392 and 201, IPC.

35. Appeal dismissed.