

**IN THE COURT OF SESSIONS JUDGE OF TIRUCHIRAPPALLI DIVISION,
TIRUCHIRAPPALLI.**

PRESENT: Thiru S.Kumaraguru, B.L.,
Principal Sessions Judge.

Friday, the 19th day of May 2017

SESSIONS CASE No.1/2017

(P.R.C. No.27/2016 of Judicial Magistrate No.III,
Tiruchirappalli - Crime No.101/2016 of Navalpattu Police
Station)

Name of the complainant	: State, rep. by Inspector of Police, Navalpattu Circle, Tiruchirappalli.
Name and address of the accused	: Karthikeyan (32/2016) S/o Ramachandran, 69, 5 th street, Annanagar, Mathur, Pudukkottai District
Charges framed	: Committing murder and robbery punishable u/s 302 and 394 r/w 397 of I.P.C.
Plea of the accused	: Not guilty
Findings of the Judge	: Accused is found guilty of offence u/s 302 and 394 r/w 397 of I.P.C.
Sentence or Order	: The accused is convicted under sections 302 and 394 r/w 397 of Indian Penal Code.

In respect of first
charge under section 302 of
Indian Penal Code the accused
is convicted to undergo
Imprisonment for Life and to
pay fine of Rs.3,000/-. In
default to pay the fine amount
he is directed to undergo
rigorous imprisonment for a
further period of 3 years.

In respect of 2nd charge the accused is convicted under sections 394 r/w 397 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.2,000/-. In default to pay the fine amount, he is directed to undergo rigorous imprisonment for a further period of 3 months. (Total fine amount Rs.5,000/-).

The substantive sentences shall run concurrently.

After the appeal time is over or in case of pendency of appeal after the disposal of appeal M.O.1 and M.O.2 shall be given to P.W.1, the interim custody of M.O.3 given to P.W.1 shall continue and the bond shall be cancelled, M.O.9 vehicle shall be given to its owner on verification of R.C. and proper identification, M.O.10 (series) currency notes shall be confiscated to Government and M.Os.6 to 8 shall be destroyed. M.O.4 and 5 shall be kept along with case records.

Public Prosecutor

: Thiru D.Asohan

Counsel for the accused

: Thiru K.M.Alagan and
Thiru C.Senthilkumar.

As per the Official Memorandum of the Hon'ble High Court in ROC No.18675-A/2017/Con.B2 dated 24.4.2017 this sessions case coming on 08.05.2017 for final hearing in the Voluntary sitting before me, upon hearing the arguments of Thiru D.Asohan, Public Prosecutor for the state and of Thiru K.M.Alagan and Thiru C.Senthilkumar, Advocates for the accused and upon perusing the records and having stood over till this day for consideration, this court delivered the following,

J U D G M E N T

The Inspector of police of Navalpattu Circle police station has alleged that the accused Karthikeyan is the friend of deceased Manikumar. In order to take away the gold chain weighing $\frac{3}{4}$ sovereigns worn by Manikumar the accused took Manikumar to the occurrence place at about 10.00 P.M. on 24.5.2016 and caused Manikumar to consume excess liquor and asked him to give the gold chain to him. When Manikumar refused to give the chain, the accused dashed the brandy bottle on the floor and with the broken brandy bottle the accused stabbed Manikumar on his right side neck, center of neck, left cheek, left ear and left hand fingers and caused injuries and caused his instantaneous death and taken away the gold chain, M-power cell phone and YU-4711 camera mobile from Manikumar. Thus, he has laid final report against the accused under sections 302 and 394 r/w 397 of Indian Penal Code.

2. On the appearance of the accused before the committal court, copies of relevant documents were furnished to the accused u/s 207 Cr.P.C. On perusal of the case records, it

reveals that the offence involved in this case is exclusively triable by the court of session. Hence the Judicial Magistrate No.III Tiruchirappalli by order dated 21.11.2016 in P.R.C.No.27/2016 committed the case records to this court under section 209 Cr.P.C. for further proceedings in accordance with law. This court has taken the case on file in S.C.No.1/2017.

3. Upon consideration of the records of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the court having formed the opinion that there were sufficient grounds for presuming that the accused has committed offence, framed charge against the accused under section 302 and 394 r/w 397 of Indian Penal Code.

4. The accused pleaded not guilty of the aforesaid charges read over and explained to him.

5. To prove the case, the prosecution has examined witnesses P.W.1 to P.W.19 and marked Ex.P.1 to P.26 documents and 15 material objects.

6. The case of the prosecution as revealed from the evidence of the prosecution witnesses is as follows:

P.W.1 Ponnusamy is the father of deceased Manikumar. P.W.2 Pandiselvi is the wife of P.W.1. Manikumar studied in Polytechnic and was working in Docomo company. The deceased used to go for work at 8.00 A.M. and to return home by 9.00 P.M. daily. On the occurrence night Manikumar did not return home. P.W.1 contacted Manikumar at about 9.30 P.M. on the occurrence night and Manikumar informed that he was taking

dinner with his friends P.W.3 Shanmugam and P.W.4 Surya and that he will return home in fifteen minutes. But he did not return home. At about 3.00 A.M. when P.W.1 tried to contact Manikumar through his phone number, he did not attend call. When the deceased was with P.W.2 and P.W.3 deceased received a phone call from one Karthi and then Manikumar leave that place. In the morning P.W.1 went for job. P.W.2 Pandiselvi and her brother-in-law P.W.5 Durairaj searched for Manikandan. At 2.00 P.M. they saw a crowd in Ayanputhur Road near OFT. P.W.2 and P.W.5 went there and saw the dead body of Manikumar lying there. There were stab injuries on his neck. Immediately P.W.2 informed P.W.1 through phone. P.W.1 came to the occurrence place and saw the dead body. Then at about 4.30 P.M. he went to Navalpattu police station and gave Ex.P.1 complaint.

(ii) P.W.13 Selvaraj, Sub-Inspector of Police at Navalpattu police station received the complaint given by P.W.1 and registered case in Cr.No.101/2016 under section 302 of Indian Penal Code. He prepared Ex.P.15 First Information Report and sent the original complaint and the First Information Report to the Judicial Magistrate No.III, Tiruchirappalli and copies to the higher officials through P.W.11 Elangovan, Head Constable.

(iii) P.W.17 Abdul Gafoor, Inspector of Police of Boiler Plant police station who was holding additional charge of the Navalpattu Police station took up the investigation in this case. On 25.5.2016 at 17.25 hours he inspected the occurrence place in the presence of witnesses P.W.6 Anandharaj and one Kumar @ Sathishkumar and prepared Ex.P.2 observation mahazar and also prepared Ex.P.18 rough sketch. From the occurrence

place he recovered M.O.6 blood stained earth and M.O.7 sample earth under the cover of Ex.P.3 mahazar in the presence of the same witnesses. Then he sent the dead body to Government Hospital, Tiruchirappalli and held inquest on the dead body in the mortuary in the presence of panchayatars and witnesses. Ex.P.19 is the inquest report. He sent requisition to the duty doctor to conduct postmortem over the dead body. P.W.17 Investigation Officer examined the witnesses and recorded their statements. Since his investigation reveals that Manikumar was murdered for gain P.W.17 altered the case into sections 302 and 379 of Indian Penal Code. Ex.P.20 is the alteration report.

(iv) P.W.16 Dr.Saravanan conducted postmortem over the dead body of Manikumar on 26.5.2016 at 1.15 P.M. During postmortem the doctor found the following injuries on the dead body.

- (1) Blood stained obliquely horizontal, gapping, chop injury 1 x 0.5 x 1 cm on back of left middle finger;
- (2) Blood stained obliquely horizontal, gapping, chop injury 1 x 0.5 x 1 cm on back of left ring finger;
- (3) Blood stained, oblique gapping chop injury 2.5 x 0.1 x 0.5 cm on lower part of left cheek; Its lower end was overhanging and upper end was beveling; It was 4 cm below and front of left ear;
- (4) Blood stained, oblique gapping chop injury 2.5 x 0.1 x 0.5 cm on left side of neck; It was 5 cm below left ear; Its lower end was overhanging and upper end was beveling;
- (5) Blood stained, Obliquely horizontal, gapping incised injury 3.3 x 0.1 x 0.8 cm on upper part of right side of

neck; It was 4 cm below chin and 9 cm above suprasternal notch; Its left end on midline of neck; There was 1.5 cm trailing abrasion present on its right end;

- (6) Blood stained, obliquely horizontal, gapping, incised incised injury 11 x 0.5 x 6 cm on front of middle third of neck, 4 cm above suprasternal notch, 5 cm below chin and 10 cm from right mastoid process; it was 9 cm right from midline and 2 cm left from midline of neck;

On dissection of neck the underlying soft tissues were cut and severed with surrounding dark red extravasation of blood; complete gapping incised injury 1.8 cm between 3rd and 4th rings of front of trachea; larynx and Hyoid bone intact; After completing postmortem P.W.16 doctor issued Ex.P.16 postmortem certificate opining that the deceased would appear to have died of shock and haemorrhage due to multiple injuries. The postmortem constable P.W.12 Rajkumar handed over M.O.11 blood stained full hand shirt, M.O.12 blood stained pant, M.O.13 blood stained sleeveless banian, M.O.14 blood stained jatty and M.O.15 one pair of chappels taken from the dead body to the Investigation Officer under Ex.P.14 special report.

(v) P.W.17 Investigation Officer again examined the witnesses P.W.1 Ponnusamy, P.W.2 Pandiselvi, P.W.5 Durairaj, P.W.6 Anandaraj, Kumar @ Sathishkumar and recorded their statements. On 27.5.2016 at 8.00 A.M. when P.W.17 was vehicle check near Guntur MIT with police party they stopped the Bajaj Discover motorcycle TN-55/AC-7355. On enquiry he revealed his name as Karthikeyan S/o Rajendran and admitted the offence of committing murder of Manikumar. P.W.17 arrested him in the presence of witnesses P.W.7 Sivaprakasam,

Village Administrative Officer and Village Assistant Krishnamoorthy. In the presence of the said witnesses he examined the accused Karthikeyan and recorded the confessional statement given by him voluntarily. P.W.17 also recovered M.O.9 TN-55/AC 7355 Bajaj Discover motorcycle used by him during the occurrence and also recovered M.O.2 YU 4711 camera mobile phone, M.O.1 M-power cell phone and 4 hundred rupee notes, One fifty rupee note totaling Rs.450/- (M.O.10 series) under the cover of Ex.P.4 mahazar and sent the material objects to the court along with Ex.P.21 form 95.

(vi) At the instance of the accused P.W.17 Investigation Officer took the accused to the Valliammai Pawn Brokers shop at Mathur. P.W.9 Mookkaiya, owner of the shop gave statement that on 25.5.2016 at 11.00 A.M. accused came to his shop and pledged the chain and received Rs.11,300/-. P.W.17 recovered M.O.3 gold chain from P.W.9 under the cover of Ex.P.5 mahazar. Ex.P.12 receipt is the receipt issued by P.W.10 Karunakaran, employee under P.W.9 Mookkaiya and Ex.P.13 is the rose colour token tagged with the chain. On requisition by the Investigation Officer P.W.18 Janet Jacinta, Sub-Inspector collected the phone call details of the sim No.8682075953 and 8883920834 (Ex.P.25 series). Thereafter he entrusted the further investigation to P.W.19 Sureshkumar, Inspector who joined duty at Navalpattu Police station.

(vii) On receipt of Ex.P.7 requisition given by the Investigation Officer P.W.8 Gomathy, Head Clerk of Judicial Magistrate's Court No.II, Tiruchirappalli has taken steps to send the material objects for chemical examination. Ex.P.8 is the office copy of the letter of Judicial Magistrate No.II, Tiruchirappalli for having sent the material objects to

forensic laboratory. Ex.P.9 is the biological report. Ex.P.10 and Ex.P.11 are the serological reports.

(vii) P.W.19 Inspector verified the investigation done by P.W.17. Then he examined the postmortem doctor and police officials. Then he altered the case into section 302 and 394 r/w 397 of Indian Penal Code. Ex.P.26 is the alteration report. After completing the investigation he laid final report against the accused under sections 302 and 394 r/w 397 of Indian Penal Code.

(viii) P.W.14 Kandan brother of accused Karthikeyan has deposed that he gave a two wheeler and cell phones to his brother Karthikeyan and his brother was using the sim numbers 96985522365, 9786028233 and 8682075953. P.W.15 Karnan has deposed that P.W.14 Kandan used to purchase things in his petty shop and he knows his brother, accused also. On 24.5.2016 he went to Mathur Rountana to attend his personal work and then returned to his house at Ayanputhur. At that time on the left side of OFT road he saw the accused sitting along with another person and consuming liquor and on the next day he came to know about the dead body lying at a distance of 100 feet away from that place.

7. The accused was questioned under section 313 of the Code of Criminal Procedure about the incriminating circumstances appearing against the accused in the evidence of the prosecution witnesses. The accused denied the evidence of the witnesses as false and has stated that a false case has been foisted on him. No witness was examined on the defence side.

8. Based on the respective contentions raised by the

prosecution witnesses in their evidence the court framed the following point for final determination:

1) *Whether the prosecution has proved the charges under sections 302 and 394 r/w 397 of Indian Penal Code beyond reasonable doubt as against the accused?*

9. The point for final determination:

The learned Public Prosecutor has contended that there is no eye witness to the occurrence and the case depends upon circumstantial evidence. The prosecution has proved the ingredients of last seen theory, 27 recovery through oral and documentary evidence. The learned Public Prosecutor further contended that to prove that prior to the occurrence the accused had contacted the deceased and to prove this aspect the prosecution has examined two set of witnesses. The first set of witnesses are P.W.3 and P.W.4. They have deposed that on the previous day night they are having their dinner in a tiffin stall along with the deceased and at that time the deceased received phone call from one the accused Karthikeyan and then the deceased replying that he was coming, left that place. The learned Public Prosecutor further contended that through the evidence of P.W.15 the prosecution has established that at about 10.00 P.M. he saw the accused and another person sitting on the left side of OFT to Ayanputhur road and in the dead body was found near that place at a distance of 100 meters. Even though P.W.15 has not spoken to about the deceased the presence of dead body nearby that place would itself prove that the deceased was seen along with the accused nearby the occurrence place. Thus the

prosecution has proved the last seen theory beyond reasonable doubt.

10. The learned Public Prosecutor further submitted that the prosecution has also proved 27 recovery through the evidence of P.W.7, P.W.9 and P.W.10 and the documents Ex.P.12 and P.13. The prosecution has proved the guilt of the accused beyond reasonable doubts and therefore, the accused is liable to be convicted.

11. On the other hand the learned counsel for the accused contended that the prosecution has failed to prove the last seen theory. Though P.W.3 and P.W.4 have deposed in their evidence that when they are having their dinner in the tiffin stall along with the deceased the accused contacted the deceased through phone, P.W.3 and P.W.4 have not mentioned the name of the accused in their statements u/s 161 Cr.P.C. The name of the accused in their evidence before court is an improvement and the improved version tutored by the police cannot be taken into consideration.

12. The learned counsel for the accused further contended that the evidence of P.W.15 is not believable and he has not specifically stated that the deceased was seen in the company of the accused on 24.5.2016 at 10.00 P.M. nearby the occurrence place. Further P.W.15 has not mentioned the name of the accused and the deceased in his statement before police. The prosecution has failed to prove the last seen theory.

13. The learned counsel for the accused further contended that the 27 recovery also was not proved by the

prosecution. P.W.9 and P.W.10 have deposed about the pledging of only dollar chain and the description of the sculpture found in the dollar was not mentioned by them and there is no description about the dollar in the receipt Ex.P.12 also. Further the prosecution has not proved the motive for the accused to murder the deceased. When the case depends upon circumstantial evidence the prosecution ought to have proved the last seen theory, motive and the 27 recovery. The prosecution has not proved all the links in the chain of circumstances connecting the accused with the crime. The prosecution has not proved the charges beyond reasonable doubt and therefore, the accused is entitled to be acquitted.

14. After taking into consideration of the contentions of both sides counsel and on perusal of the oral and documentary evidence in this case, the prosecution has examined P.W.3, P.W.4 and P.W.15 to connect the accused with the deceased. P.W.3 has deposed that on 24.5.2016 at 9.00 P.M. he was taking tiffin along with P.W.4 and deceased Manikumar in a hotel and at that time Manikumar's father contacted Manikumar through phone and then another phone came to Manikumar. While attending phone Manikumar told "கார்த்திகேயன் நான் வந்துவிடுகிறேன்." and then immediately left that place. P.W.4 has deposed that when they were eating Manikumar received a call from his father and then from another person. The deceased who attended the call told "வந்துவிட்டேன் கார்த்தி" and immediately left that place.

15. The learned defence counsel has contended that the name Karthikeyan and Karthi mentioned by P.W.3 and P.W.4

itself will not denote the accused and further there is no evidence to show that the deceased went to the occurrence place to see the accused. Further P.W.3 and P.W.4 have not mentioned the name of the person who called the deceased through phone in their 161 statements. Therefore, the evidence of P.W.3 and P.W.4 cannot be taken into account.

16. Perusal of the records would reveal that besides the evidence of P.W.3 and P.W.4 the prosecution has examined P.W.15 to prove the last seen theory. P.W.15 has deposed that on 24.5.2016 he went to Mathur rountana in connection with some personal works and then returning home at Ayanputhur through OFT road and at that time on the left side of OFT road near Ayanputhur branch road he saw the accused and another person sitting there and consuming liquor and then on the next day he came to know about the dead body nearby that place. P.W.15 has further deposed that Kandan, brother of the accused is running petty shop and he used to go for that petty shop to purchase articles and hence he knew the said Kandan and his brother Karthikeyan accused herein. P.W.15 has not specifically mentioned that he knew the deceased and the deceased was sitting along with the accused and consuming liquor.

17. To prove that at about 9.00 P.M. on 24.5.2016 the deceased was contacted by the accused the prosecution has examined P.W.14 Kandan, brother of the accused and P.W.18 Janet Jacintha, Sub-Inspector of Police who collected the call details of the sim cards of the deceased and the accused. P.W.14 Kandan has deposed that the accused is his brother and he arranged for a two wheeler for the accused and

gave his sim cards No.9698552365, 9786028233 and 8682075953 for the use of his brother Karthikeyan. P.W.18 has collected the call details of 8683075953 and 8883920834 which is the phone number of the deceased. The call details is Ex.P.25. Perusal of Ex.P.25 reveals that the deceased contacted the accused at 21:28:29 on 24.5.2016 from Subramaniapuram tower and then the accused contacted the deceased from Mathur tower at 21:31:13 and then at 21:35:26 and at 21:42:20 the deceased contacted the accused through Airport tower.

18. The learned counsel for the accused contended that the evidence of P.W.3 and P.W.4 are improved versions and they have not stated in their 161 statement that the person by name Karthi or Karthikeyan has called the deceased through his cell phone, but mentioned the above name in their evidence before court. The improved version of evidence cannot be taken into consideration. In this regard, the defence counsel relied on the following decisions in support of his contention.

- 1) 1971 Supreme Court Cases (Cri.), 684 [Yudhishtir .. Appellant -vs.- The State of Madhya Pradesh]
- 2) 1980 Cri.L.J.1397 [Randhir Singh .. Appellant -vs.- The State .. Respondent]
- 3) 1998 (1) MWN (Cr.) S.C. 141 [State of Bihar -vs.- Biswanath Rai and others]
- 4) 2003 (11-12) SBR 378 [Hem Raj and another .. Appellants -vs.- State of Punjab]
- 5) 2016 (2) MWN (Cr.) 56 (DB) [Veerapathiran and others ..

Appellants -vs.- State rep. by the Inspector of Police, Avaniapuram Police station, Madurai]

6) (2010) 2 Supreme Court Cases (Cri.) 131 [Raman Kumar -vs.- State of Punjab]

19. The above case laws are not applicable to the present facts of the case. The Hon'ble High Court has held in the above referred case laws that improved versions cannot be taken into account to convict the accused. But in the present case besides the evidence of P.W.3 and P.W.4 the evidence of P.W.15 and Ex.P.25 call details would prove that the deceased had contacted the accused prior to the occurrence. The prosecution has proved that prior to the occurrence, the deceased was contacted by the accused through phone between 9.28 P.M. and 9.42 P.M. Therefore, the contention of the defence counsel is not sustainable.

20. The evidence of P.W.15 is that he saw the accused and the deceased sitting on the left side of OFT road near Ayanputhur branch road at about 10.00 P.M. The evidence of P.W.15 when combined perusal with Ex.P.25 call details would reveal that the deceased had contacted the accused at 9.28 P.M. on 24.5.2016 and then the accused contacted the deceased and then the deceased contacted the accused. There were some conversations between the accused and the deceased between 9.28 P.M. and 9.42 P.M. The call details would prove that the deceased and accused had telephonic contact between 9.28 and 9.42 P.M. on 24.5.2016. P.W.15 has deposed that on 24.5.2016 at about 10.00 P.M. he saw the accused and another person sitting together and consuming liquor. The evidence of

P.W.3, P.W.4 and P.W.15 coupled with Ex.P.25 would clearly establish that the accused and the deceased had conversation between them and they were seen together by P.W.15 near Ayanputhur branch road and on the next day the deceased dead body lying near that place. The prosecution has proved all the links in the chain of circumstances to connect the accused with the occurrence. Further this court has gone through the evidence of P.W.15 it shows that he did not speak about the particular fact regarding that the deceased and accused are sitting in near Ayanputhur branch road. Expect this aspect all other facts are narrated by the P.W.15. P.W.15 was treated as hostile witness and cross-examined by the prosecution. If any portion of the evidence is favouring the prosecution or the defence side that can be taken into account. Therefore, this court has accepted the prosecution case, there is no bar to accept the particular portion of the evidence of P.W.15, even P.W.15 declared as hostile witness.

21. Further the learned counsel for the accused contention is that, the investigation officer has not given proper explanation, why 3 days delay in examining the witnesses P.W.3 and P.W.4. Further contention is that from the beginning itself, the prosecution case is, P.W.1 deposed evidence that when he has called his son through phone, his son replied that he was having tiffin along with P.W.3 and P.W.4. P.W.3 and P.W.4 were present near the dead body from 25.05.2016 at about 1.P.M., but the non examination of the witnesses immediately creates doubt and it is fatal to the prosecution case. In this regard the learned counsel for the accused relied on the following reported cases reported in

2004 (1) TNLR (SC) Page No 609 Vijaybhai patel... Appellant Vs Navnibhi nathubhai Patel and others and 1971 Supreme Court Cases (Cri) 313 Balakrushna swamy ... Appellant Vs State of Orissa. The above said case laws are not applicable in the present fact of the case. The Hon'ble Supreme Court has held that when the investigation officer has not given proper explanation in his evidence as to why there is delay in examining the eye witness and injured witness the prosecution case is doubtful. In the present case, prior to find out the dead body, the deceased had dinner along with P.W.3 and P.W.4. Then they have gained knowledge that the dead body of the deceased was lying in the occurrence place and then they went to the Hospital at 4.00 P.M. On same day at about 6.00 to 7.00 P.M inspector examined them and recorded their statement. Further P.W.3 and P.W.4 are not eye witnesses. Therefore the learned counsel for the accused contention is not sustainable one.

22. Further, this court has gone through the case records, the prosecution has proved the 27 Recovery. The accused was arrested by the Investigation Officer in the presence of P.W.7 Village Administrative Officer. P.W.7 has deposed that when he was in the tea shop near M.I.E.T. College the Investigation Officer was on vehicle check, he stopped the vehicle rode by the accused, but he did not stop the vehicle and hence the police chased him and caught hold of him. When enquired by the police, the accused gave confession statement voluntarily. During the time of recording the accused statement he discloses that if he was taken to the Vallimaammai Jewellery he could have identified

the jewel. Further he deposed that the accused has given statement. Then the police recovered M.O.9 motorcycle of the accused and M.O.1 and 2 cell phones of the deceased from the accused. On the basis of the admissible portion of the confession statement the accused took them to Valliammai jewelery shop and recovered M.O.3 chain from the owner Mookkaiya and the police recovered Ex.P.12 counterfoil receipt under which the accused had pledged the M.O.3 chain and the rose colour token tagged with the chain.

22. The learned counsel for the accused contended that the prosecution has failed to establish 27 recovery. The defence counsel vehemently argued that the description of the sculpture of lord Krishna found in the dollar was not mentioned in the receipt. Further P.W.1 and P.W.2 have not stated before police about the description of the dollar and there is no mention about the lord Krishna sculpture in the dollar in their 161 statement. Only as an afterthought at the deliberation of the police officials P.W.1 and P.W.2 have implicated the accused in this case. Further, contended that the evidence of P.W.9 and P.W.10 is not sufficient to prove the 27 recovery and they did not speak about the description of the chain pledged by the accused in their shop. The accused has pledged his own chain and the accused has been falsely implicated in this case by linking the pledging of jewel by the accused. The prosecution failed to prove 27 recovery and it is fatal to the prosecution case. Further the learned counsel for the accused contended that the evidence of P.W.7 and P.W.17 have deposed that the statement of the accused was written by a police man. But the prosecution

marked the confession statement in computer generated form. It is created serious doubt about the prosecution case. In this regard, the learned counsel for the accused relied on reported case, reported in 2017 (1)MWN Page No.169 DB.

23. After taking into consideration of the arguments of both sides and on perusal of the oral and documentary evidence now the point to be decided is whether 27 recovery has been established by the prosecution. In this regard this court has gone through the evidence of the attesting witnesses to the confession statement. P.W.7, Village Administrative Officer is the attesting witness to the confession. He has deposed evidence that on 27.5.2016 when he was in the tea shop nearby the place of arrest of the accused along with his assistant the police checked the vehicles. At that time they caught hold of the accused and while enquiring him the accused gave voluntary confession statement admitting the offence. He has further deposed that on the basis of the admissible portion of confession statement the accused took them to Valliammai jewelery shop where from M.O.3 chain was recovered by the Investigation Officer. The learned counsel for the accused contended that P.W.7 has deposed that the police recovered M.O.3 from Valliammai jewelery and it shows that M.O.3 chain is not the one pledged in the pawn broking shop of P.W.9. Mere mentioning as jewelery instead of pawn brokers shop is not sufficient to discard the entire prosecution case. When the accused has given voluntarily statement and based on the admitting portion of the accused confession statement, this court opinion is the prosecution proved 27 recovery. Further this court has gone through the

accused 313 question it shows that he went to the P.W.9 Pawn Borker's shop for pledging his personal jewel and the said opportunity was utilized the investigation officer. This court has gone through the 313 Cr.PC statement, the accused has not disclosed, he went to P.W.9 pawn broking shop for pledging his jewel on that day. Further he did not disclose, the police obtained his statement by way of misrepresentation, undue influence and coercion. Therefore, the learned counsel for the accused contention is not sustainable one.

24. Further, the prosecution has examined the owner of the pawn broking shop as P.W.9. The employee of the shop is P.W.10. They have deposed that the accused came to their shop to pledge jewels on earlier occasions also and on 25.5.2016 accused came to his shop and pledged M.O.3 dollar chain. The Investigation Officer recovered the chain and also the copy of counterfoil receipt and the rose colour token tagged with the chain. Through the evidence of P.W.9 and P.W.10 and Ex.P.12 and P.13 the prosecution has established that the accused had pledged M.O.3 dollar chain in the shop of P.W.9 on 25.5.2016 immediately after the occurrence. In Ex.P.12 receipt it is mentioned as Dollar design chain. There is no mention about the lord Krishna sculpture found in the dollar. P.W.9 has deposed that they will specifically mention whether stoned jewel or with any initials or designed chain and in Ex.P.12 they have mentioned as design chain with dollar. In Ex.P.12 the accused also signed.

25. During 313 questioning the accused has stated that he has pledged his own chain in the shop of P.W.9 and it has

been shown as the chain of the accused. The accused also has not specifically stated that he had pledged gold chain with Lord Krishna sculptured dollar. Further P.W.1 has filed petition for interim custody of the M.O.3 chain, but there is no objection by the accused to give the chain to P.W.1. The petition was also allowed by the Judicial Magistrate and interim custody given to P.W.1. Though P.W.1 has not mentioned that the deceased was wearing gold dollar chain in the complaint, it is not fatal to prosecution case. Because, we cannot expect every minute details to be mentioned in the complaint. The prosecution has proved 27 recovery of M.O.3 chain beyond reasonable doubt. Further the prosecution has proved 27 recovery, minor discrepancies are not fatal to the prosecution case.

26. The learned counsel for the accused contended that the confession statement produced before court is the computer generated document and it is not admissible in view of Sec. 25 of the Evidence Act and relied on the case law reported in 2017(1) MWN (Cr1.), 169 (DB)[Mohan .. Appellant -vs.- State by the Inspector of Police, Sholinghur Police station, Vellore District .. Respondent]. The above case law is not applicable to the present facts of the case. In the above case law related case, the handwritten statement was not produced instead the computer generated statement was produced. In this case the accused has signed in the statement typed in the computer and further on the basis of admissible portion of confession statement property was recovered and the 27 recovery was also proved through evidence.

27. P.W.6 Anandaraj deposed that from the occurrence place the Investigation Officer has recovered M.O.6 blood stained soil, M.O.7 sample soil and M.O.8 broken brandy bottle piece in his presence. P.W.16 postmortem doctor has deposed that there are 6 injuries on the neck of the deceased and there is possibility for sustaining such injuries if stabbed and teared with broken sharp edged glass. The evidence of the doctor P.W.16 proves that the deceased was attacked with broken brandy bottle on his neck and murdered.

28. The learned counsel for the accused further contended that the cases depends on circumstantial evidence, but the prosecution has not proved the motive for the accused to commit the offence. Further he has contented that when the prosecution has registered the case based on the circumstantial evidence it is the bounden duty of the prosecution to connect all links in the chain of circumstances without any break. Further his contention is that if any one link is found missing, the prosecution case has to be thrown out. The defence counsel further contended that in the present case, many links were missing to connect circumstance to show that the accused involved in the occurrence. In this record the learned counsel relied on several reported cases, reported in 2006 (1) CTC page No.342 Sulochana ... Appellant Vs State, Rep. by Inspector of police Vallikandapuram, 2006 (1) CTC Page No.599 Balaprasanna ... Appellant Vs Inspector of Police Respondent, 2012 3 MLJ (Cr1) 414 Kavitha and others ... Appellant Vs Sate, I.O.Police, Permanallur, 2012 (3) MWN Page No.414 C.Venkatesh ... Appellant Vs The Inspector of Police Munneerpallam

Tirunelveli Dt. ... Respondent. The learned Public Prosecutor argued that when the death of the deceased and removal of the gold chain from the deceased took place in one and the same occurrence the presumption is that the accused who found to be in possession of the stolen property has committed the murder, since there is no proper explanation by the accused for being in possession of the M.O.3 chain of the deceased.

29. The Public Prosecutor relied on the reported case reported in (2016) 4 M.L.J.(Cr1.),540 [Muthu @ Vembadu Muthu and others .. Appellants -vs.- State, rep. by the Inspector of Police, Somangalam Police station, Kancheepuram District .. Respondent] wherein it is held

"As this court has discussed, the death of the deceased and the removal of M.Os.1 to 8 had occurred in one and the same occurrence. The natural presumption arising there from is that the persons who committed robbery had caused the death of the deceased also. Here, in the instant case, the presumption arising out of Sec.114 of the Evidence Act that A1 to A3 who were found in possession of the stolen properties, have not explained their possession to the satisfaction of the Court and, therefore, this court is inclined to presume that they are the ones who committed the murder of the deceased and committed robbery of M.Os.1 to 8. Of course, this presumption is rebuttable. But, there is no evidence either direct or circumstantial, to rebut the said presumption. This unrebutted presumption coupled with the evidence of P.Ws.1 and 4 have gone to prove the guilty of A1 to A3 beyond any reasonable

doubt."

For the same proposition of law the Public Prosecutor relied on the reported cases reported in (1) (2016)4 M.L.J.(Cr1.), 96 [Yuvaraj .. Appellant -vs.- State by the Inspector of Police, Gopichettipalayam Police station, Erode District] (2) (2016) 4 MLJ (Cr1.), 123 [R.Navaneetha Krishnan and another -vs.- State by Inspector of Police, Mangalam Police Station, Mangalam & Tirupur District... Respondent] and (3) (2017) 1 MLJ (Cr1.) 566 [Prakash .. Appellant /vs./ State, rep. by Inspector of Police, Mettupalayam Police Station, Coimbatore District .. Respondent]

The above case laws are squarely applicable to the present facts of the case. When the prosecution has proved the last seen theory and when the M.O.3 chain of the deceased was recovered at the instance of the accused, in the absence of any rebuttal evidence, the presumption is that the accused had committed the murder of deceased Manikumar for robbing of his gold chain.

30. The learned defence counsel argued that as per the evidence of P.W.1 he received information by 12.00 noon but the complaint was given at 4.30 P.M. and there is delay in preferring complaint before the police and there is no proper explanation on the side of prosecution regarding the delay in registering the F.I.R. and it is fatal to the prosecution case. P.W.1 has deposed that on receipt of information he went to the occurrence place by 3.30 P.M. and he was in the occurrence place up to 4.00 P.M. and then went to the police station and gave complaint by 4.30 P.M. P.W.1 had gone for

work and on receipt of information he went to the occurrence place and after seeing the dead body of his son he went to the police station and gave the complaint. Further there is no inordinate delay in lodging the complaint. Therefore, the contention raised by the learned defence counsel on this aspect is not sustainable.

33. Though it was stated by the accused during 313 questioning that he pledged his chain and received money, he has not stated that M.O.3 chain is that of him and not that of the deceased. Further the accused has not stated about the design and pattern of his chain. The prosecution has proved through the evidence of P.W.9, P.W.10, Ex.P.12 and P.13 that the accused had pledged the gold chain (M.O.3) of the deceased and received money. The prosecution has proved the last seen theory and 27 recovery connecting the accused with the death of the deceased. The prosecution has proved that the accused alone had committed the murder of deceased Manikumar.

34. The prosecution has proved through evidence of P.W.1, P.W.3 and P.W.4 that on the previous night the deceased was with P.W.3 and P.W.4 and then on the phone call from Karthikeyan the deceased left the company of P.W.3 and P.W.4 and then there were telephonic conversations between the accused and the deceased till 9.42 P.M.as revealed from ex.P.25 call details. P.W.15 has deposed that he had seen the accused talking with the deceased near the occurrence place. The prosecution has proved all the links in the chain of circumstances without any break that the deceased and the accused were sitting together near the occurrence place at

10.00 P.M. and then the dead body was seen near that place on the next day. The prosecution has proved the last seen theory. The evidence of P.W.7, P.W.9 and P.W.10 and Ex.P.12 and P.13 would amply prove the recovery u/s 27 of Evidence Act. The accused with an intention to grab the M.O.3 chain from the accused assaulted him with M.O.8 broken bottleneck and committed the murder. The evidence of P.W.16 postmortem doctor strengthens the prosecution case. He has deposed that there is possibility for sustaining the injuries as found on the dead body. The prosecution has proved that the death of the deceased is a homicidal death. The act of the accused does not fall under any of the exceptions under section 300 I.P.C. The accused is found guilty of offence under section 302 of Indian Penal Code.

35. The accused had committed murder in his act of grabbing the M.O.3 chain from the deceased. The accused is found guilty of offence under section 394 r/w 397 of Indian Penal Code. The prosecution has proved the charges and the accused is found guilty of offence under sections 302 and 394 r/w 397 of Indian Penal Code.

31. Having thus held, the accused was heard on the quantum of sentence. He has stated

"நான் குற்றம் எதுவும் செய்யவில்லை."

The plea of the accused is considered by this court. The accused had committed murder for gain. After committing murder he robbed the golden chain worn by the deceased. These aspects are taken into account in awarding the sentence.

In the result,

The accused is convicted under sections 302 and 394 r/w 397 of Indian Penal Code.

In respect of first charge under section 302 of Indian Penal Code the accused is convicted to undergo Imprisonment for Life and to pay fine of Rs.3,000/-. In default to pay the fine amount he is directed to undergo rigorous imprisonment for a further period of 3 years.

In respect of 2nd charge the accused is convicted under sections 394 r/w 397 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.2,000/-. In default to pay the fine amount, he is directed to undergo rigorous imprisonment for a further period of 3 months. (Total fine amount Rs.5,000/-).

The substantive sentences shall run concurrently.

After the appeal time is over or in case of pendency of appeal after the disposal of appeal M.O.1 and M.O.2 shall be given to P.W.1, the interim custody of M.O.3 given to P.W.1 shall continue and the bond shall be cancelled, M.O.9 vehicle shall be given to its owner on verification of R.C. and proper identification, M.O.10 (series) currency notes shall be confiscated to Government and M.Os.6 to 8 shall be destroyed. M.O.4 and 5 shall be kept along with case records.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in open court on this day of 19th May 2017.

**Principal Sessions Judge,
Tiruchirappalli.
19.05.2017**

LIST OF WITNESSES:**FOR PROSECUTION:**

P.W.1 Ponnusamy
 P.W.2 Pandiselvi
 P.W.3 Shanmugam
 P.W.4 Surya @ Suryakanth
 P.W.5 Durairaj
 P.W.6 Anandaraj
 P.W.7 Sivaprakasam, V.A.O.
 P.W.8 Gomathy, Head Clerk
 P.W.9 Mookkaiya
 P.W.10 Karunakaran
 P.W.11 Elangovan
 P.W.12 Rajkumar, Head Constable
 P.W.13 Selvaraj, S.I. of Police
 P.W.14 Kandan
 P.W.15 Karnan
 P.W.16 Dr.Saravanan
 P.W.17 Abdul Gafoor
 P.W.18 Janet Jacintha, S.I.of Police

P.W.19	Y.Sureshkumar, Investigation Officer
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FOR DEFENCE: NIL**LIST OF DOCUMENTS:****FOR PROSECUTION:**

Ex.P.1	25.05.2016	Complaint
Ex.P.2	25.05.2016	Observation mahazar
Ex.P.3	25.05.2016	Seizure mahazar
Ex.P.4	27.05.2016	Seizure mahazar
Ex.P.5	27.05.2016	Seizure mahazar
Ex.P.6	27.05.2016	Seizure mahazar

Ex.P.7	10.06.2016	Police requisition
Ex.P.8	10.06.2016	Office copy of letter of J.M.II,Tiruchy
Ex.P.9	20.06.2016	Biological report
Ex.P.10	18.11.2016	Serological report on properties
Ex.P.11	18.11.2016	Serological report
Ex.P.12	25.05.2016	Xerox copy of counterfoil receipt
Ex.P.13	25.05.2016	Rose colour token
Ex.P.14	26.05.2016	Special report
Ex.P.15	25.05.2016	First Information Report
Ex.P.16	26.05.2016	Postmortem certificate
Ex.P.17	20.06.2016	Viscera report
Ex.P.18	25.05.2016	Rough sketch
Ex.P.19	26.05.2016	Inquest report
Ex.P.20	25.05.2016	Alteration report
Ex.P.21	27.05.2016	Form 95
Ex.P.22	27.05.2016	Form 95
Ex.P.23	25.05.2016	Form 95
Ex.P.24	26.05.2016	Form 95
Ex.P.25	..	Call details of Sim No.8883920834 and 8682075953
Ex.P.26	19.07.2016	Alteration report

FOR DEFENCE: NIL

LIST OF MATERIAL OBJECTS:

M.O.1	M-power cell phone
M.O.2	YU Camera mobile
M.O.3	Gold chain
M.O.4	Photo
M.O.5	CD
M.O.6	Blood stained earth
M.O.7	Sample earth
M.O.8	Broken brandy bottle piece
M.O.9	Bajaj Discover motorcycle TN-45/AC-7355

M.O.10 Rs.100 x 4
(series) Rs.50 x 1 = Total Rs.450/-.

**Principal Sessions Judge,
Tiruchirappalli.
19.05.2017**

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