

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.11.2017

PRONOUNCED ON: 19.12.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Criminal Appeal No.498 of 2014 & CrI.M.P. No.5255 of 2017

Manikandan

Appellant

vs.

State represented by  
the Inspector of Police  
Arachalur Police Station  
Erode District  
Cr. No.112 of 2010

Respondent

Criminal Appeal filed under Section 374 Cr.P.C. seeking to set aside the judgment of conviction dated 31.07.2014 made in S.C. No.103 of 2011 on the file of the Mahila Sessions (Fast Track Court), Erode.

For appellant

Mr. Philip Ravindran Jesudass

For respondent

Mr. K. Madhan  
Government Advocate (Crl. Side)

**JUDGMENT**

This Criminal Appeal has been preferred seeking to set aside the judgment of conviction dated 31.07.2014 made in S.C. No.103 of 2011 on the file of the Mahila Sessions (Fast Track Court), Erode.

2 The schema of the prosecution case is as under:

2.1 On 06.02.2010, around 10 p.m., when Lakshmi (P.W.1), a housewife, went to the backyard of her house to discard the plantain leaves used for partaking food, the accused pulled her gold chain from behind and she resisted it. At that time, the accused brandished a knife and threatened her due to which, she let go off the chain, but, started shouting "Thief, thief". The accused took her chain and sped away. On hearing her call for help, her husband and sons came there, by which time, the accused had scaled the wall and run away.

2.2 On the complaint (Ex.P.1) lodged by Lakshmi (P.W.1), Ganesan (P.W.8), Inspector of Police, registered a case in Cr. No.68 of 2010 on 07.02.2010 at 00.15 hours and prepared the FIR (Ex.P.7) under Section 392 IPC against unknown accused.

2.3 In the complaint, Lakshmi (P.W.1), has stated the age of the accused to be between 30 and 40 and that he was wearing half trousers and that she could recognise him, if she sees him.

2.4 Ganesan (P.W.8), Inspector of Police took up investigation of the case and since Lakshmi (P.W.1) suffered injuries in her neck in the incident, she was sent to the hospital. Ganesan (P.W.8) prepared Observation Mahazar (Ex.P.2) and rough sketch (Ex.P.8) in the presence of Shanmugasundaram (P.W.4) and Kandasamy (not examined). He also examined some witnesses and was proceeding with the investigation.

2.5 Lakshmi (P.W.1) was treated by Dr. Kanakachala Kumar (P.W.7), who, in his evidence and in the accident register (Ex.P.6), has noted three contusions in the neck region and she was treated as out-patient. On 31.10.2010, the police arrested Manikandan (A1) along with the other accused and recovered a knife from his possession under the cover of mahazar (Ex.P.4) in the presence of witnesses Loganathan (P.W.5) and Thangavel (not examined). Pursuant to the disclosure statement of Manikandan (A1), the police recovered a gold chain from Murugavel (P.W.6), a pawn broker, with whom Manikandan (A1) is said to have pledged it.

2.6 During the course of investigation, it came to light that apart from Manikandan (A1), Soundarrajan (A2), Marimuthu (A3) and Sakthi @ Sekar (A4) were also involved in the offence and therefore, the police filed an alteration report (Ex.P.11) altering the case from one under Section 392 IPC to one under Sections 447,392 read with 397 read with 34 IPC.

2.7 Ganesan (P.W.8) examined further witnesses including the doctor who treated Lakshmi (P.W.1) and completed the investigation and filed a final report in P.R.C. No.112 of 2010 before the Judicial Magistrate No.II, Erode for offences under Sections 447 read with 34, 392 read with 397 and 506(ii) read with 34 IPC against Manikandan (A1), Soundarrajan (A2), Marimuthu (A3) and Sakthi @ Sekar (A4).

2.8 On the appearance of the accused, they were furnished with the copies of the relied upon documents under Section 207 Cr.P.C and the case was committed to the Court of Sessions in S.C. No.103 of 2011 and was tried by the Mahila Judge (Fast Track Court) Erode. During trial, Soundarrajan (A2) and Sakthi @ Sekar (A4) had absconded and therefore, the case against them was split up and trial proceeded against Manikandan (A1) and Marimuthu (A3).

2.9 To prove the case, the prosecution examined 8 witnesses, marked 11 exhibits and 2 material objects. When the accused were questioned about the incriminating circumstances appearing against them under Section 313 Cr.P.C., they denied the same. No witness was examined nor any document was marked on behalf of the accused.

2.10 After considering the evidence on record and hearing the learned counsel on either side, the Trial Court, by judgment dated 31.07.2014 in S.C. No.103 of 2011, acquitted Marimuthu (A3) and convicted Manikandan (A1) for



the offences under Sections 392 read with 397 IPC and sentenced him to undergo 7 years rigorous imprisonment and acquitted him of the charges under Sections 447 and 506(ii) IPC. Challenging the conviction and sentence slapped against him, Manikandan (A1) is before this Court.

3 Heard Mr. Philip Ravindran Jesudass and Mr. K. Madhan, learned Government Advocate (Criminal Side) appearing for the respondent-State.

4 The learned counsel for the accused submitted that the evidence of Lakshmi (P.W.1) is not corroborated by any other evidence and that even according to the prosecution, there was no light at 10.00 p.m. and therefore, the identification of the accused by Lakshmi (P.W.1) in the Court for the first time deserves to be rejected. He further submitted that Murugavel (P.W.6) is not a pawn broker and that the police have not produced any document to show that the accused had pledged the gold chain with him. He also submitted that Lakshmi (P.W.1), in the cross-examination, has admitted that she saw Manikandan (A1) in the police station and therefore, her identification in the Court should be rejected.

5 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the accused.

6 This Court gave its anxious consideration to the rival submissions.

7 Lakshmi (P.W.1), in her evidence, has stated that on 06.02.2010, after having dinner at 10 p.m., she went to the backyard of her house to dispose of the plantain leaves and at that time, she felt that someone was pulling her chain from behind; however, she resisted the same by holding on to her gold chain tightly; at that time, the accused brandished a knife, seeing which, she let go off the chain, which got cut on account of it being forcibly pulled, resulting in injuries to her neck. She has been treated for her injuries by Dr.Kanakachala Kumar (P.W.7) who has also recorded the injuries in the accident register (Ex.P.6).

8 Concededly, test identification parade was not conducted in this case. Though the arguments advanced by the learned counsel for the accused did look attractive at the first blush, yet, on a reading of the cross-examination of Lakshmi (P.W.1), it is seen that she has stated as under:

"gpd; g[wkhf te;J vd; fGj;jpy; ,Ue;j brapid  
 ,Gj;jhh;/ gpd;g[wkhf ,Ue;j jpUlid ghh;f;f KoahJ vd;W  
 brhd;dhy; gpd;g[wkhf te;J fj;jpia fhl;o Kd;dhy; te;J  
 kpul;odhh;/"

The above answer has been elicited not in the chief-examination, but, in the cross-examination of Lakshmi (P.W.1), the free translation of which is as under:

"If it is stated that the chain was pulled from behind and therefore, I could not have seen the accused, he pulled the chain from behind, but, came in front of me and brandished a knife".

9 That apart, even in her complaint, Lakshmi (P.W.1) has categorically stated the age of the accused to be between 30 and 40 and that she can identify him if she sees him. In such view of the matter, the non-conduct of Test Identification Parade cannot be said to be fatal in a case of this nature.

10 As regards the contention of the learned counsel for the accused that no document evidencing pledge of the gold chain (M.O.2) with Murugavel (P.W.6) has been filed by the prosecution, this Court is of the view that the accused had pledged the fruits of crime and one cannot expect either the accused or the receiver of the property to maintain records. Murugavel (P.W.6), in his evidence, has stated that he was running a pawn shop and that in the year 2009, Manikandan (A1) had pledged 7  $\frac{3}{4}$  sovereigns of gold chain and had taken Rs.40,000/- and again, on 09.02.2010, he had pledged 10 sovereigns of gold chain (M.O.2) and had taken Rs.5,000/- and on 31.10.2010, the police came along with Manikandan (A1) and recovered the gold chain (M.O.2). It is pertinent to point out that this gold chain (M.O.2) has been identified by Lakshmi (P.W.1) as belonging to her. Murugavel (P.W.6) has further stated in his evidence that he is, at present, running a lathe workshop and that he was into pawn broking business earlier. This Court has no reason

to disbelieve the testimony of Lakshmi (P.W.1) and Murugavel (P.W.6).

11 The submission of Mr. Philip Ravindran Jesudass that in view of the admission of Lakshmi (P.W.1) that she saw the accused in the police station, her identification of the accused in the dock stood vitiated, requires expatiation.

12 In cases of chain snatching and dacoity, the accused do not emulate the methods of the infamous Pink Panther, who leaves behind his calling card after the commission of a crime. Therefore, in the complaint to the police, the victim will give some identifiable features of the accused such as the skin complexion, hair style, height, general constitution and would generally say that he / she can recognise him, if shown. On such a complaint, the police will register an FIR against "unnamed accused" and proceed with the investigation. Whenever the police round up a suspect or when a suspect is arrested in another case and he spills the beans about his involvement in this case, the minimum thing which the police will be expected to do is, to call the victim to the police station and show him/her the suspect. There is absolutely no bar in the Code of Criminal Procedure or in any other law for this. All over the world the police work only this way, because, this is a fundamental commonsensical approach. The life of the law, it is said, is not logic but experience. It is a matter of common experience that mechanical arrest of a suspect/accused, even without confirming his identity, would end in artificial



and arbitrary investigative methods. To arrest a person amounts to putting fetters on his personal liberty guaranteed under Article 21 of the Constitution of India. That is why, in **Joginder Kumar vs. State of Uttar Pradesh [(1994) 4 SCC 260]**, the Supreme Court has held that, the power to arrest is one aspect and the exercise of such a power is yet another aspect. In fact, sweeping amendments have been made by Central Act 5 of 2009 with effect from 01.11.2010 curtailing the powers to arrest, especially in cases where the offence punishable is upto seven years.

13 The maximum punishment for theft of an idol in Tamil Nadu under Section 380 IPC is imprisonment for three years. To illustrate, if a Watchman of a temple has seen the thief running away with the idol, but, unfortunately, the idol had changed hands and gone into a foreign country, can the thief be let off? In such a case, the police are not expected to arrest the thief immediately in view of the aforesaid amendments to the provisions for effecting arrest, and in the light of the law laid down by the Supreme Court in **Arnesh Kumar vs. State of Bihar and another [(2014) 8 SCC 273]**. The suspect may even give a police confession that he had lifted the idol. Nevertheless, to say that he should be arrested without even asking the watchman to identify him in the police station for the purpose of validation, sounds unreasonable. Section 54-A of the Code makes arrest a *sine qua non* for conducting a Test Identification Parade. If the suspect is asked to appear by issuance of a notice under Section 41-A Cr.P.C. and on his appearance, if

the victim says that the suspect is not the offender, the suspect need not be arrested at all. Even if the victim says that he is the offender, still, if the police officer is convinced that the suspect will not abscond and face trial, he need not arrest him in a case where Section 41 (1) (b) of the Cr.P.C. applies.

14 Then, what is the sanctity of a Test Identification Parade? A Test Identification Parade is essentially conducted during investigation for twin purposes:

- to test the capability of the victim to identify the accused when lined up with dummies; and
- to use such identification, if done by a Magistrate, as a corroborative piece of evidence for dock identification.

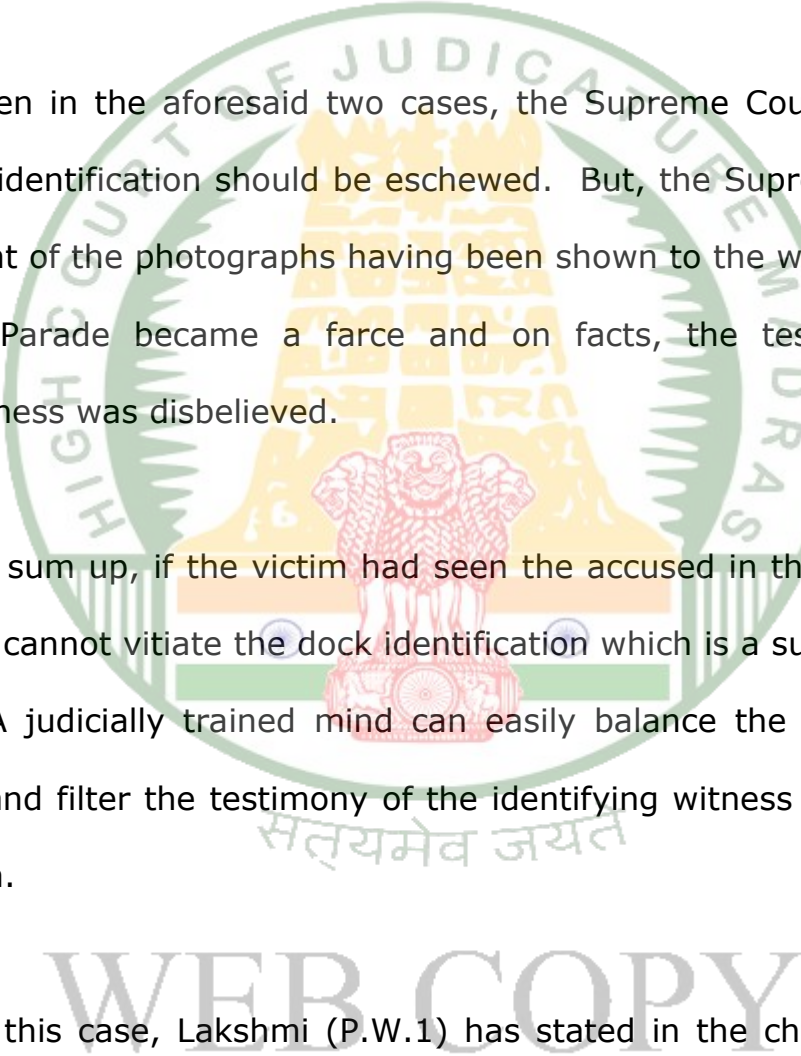
In a given case, if the police do not want corroborative evidence via Test Identification Parade proceedings, it is their choice. If a victim is shown the suspect in the police station and he confirms the identity, that cannot be used as a corroborative evidence for dock identification in view of the bar under Section 162 Cr.P.C. In other words, in the examination-in-chief of the victim, he cannot say that he identified the accused in the police station in view of the embargo engrafted under Section 162 Cr.P.C. Seeing the suspect in the police station, *ipso facto*, cannot and will not vitiate the dock identification, especially in the absence of any express prohibition in the Code for showing the accused to the victim. Section 54-A Cr.P.C. that was introduced by Central Act 25 of 2005 is only an enabling provision which empowers the Court to issue a direction to an arrested accused to subject himself to Test Identification Parade

proceedings. The Code of Criminal Procedure has been there in various forms since 1862 and the police were conducting Test Identification Parade as part of investigation process and therefore, Section 54-A Cr.P.C. cannot be said to have introduced the concept of Test Identification Parade for the first time. Of course, in a given case, if the police have sufficient materials like recovery of an article, etc., they are justified in arresting the suspect even without getting any validation from the witness and after he is remanded to judicial custody, steps can be taken for conducting Test Identification Parade proceedings by a Magistrate.

15 In **Mukesh vs. State (NCT of Delhi) [(2017) 6 SCC 1]**, popularly known as **Nirbhaya** case, it was argued that the facts of that case revealed that even before the Test Identification Parade, the principal witness had the opportunity to see the accused and that the evidence of the principal witness must, therefore, be rejected. This plea did not find acceptance with the Court, as could be seen from the following passage in the judgment:

"142. It is also argued that there is material on record to show that the informant had the opportunity to see the accused persons after they were arrested. It is necessary to state here that TIP does not constitute substantive evidence. It has been held in *Matru v. State of U.P.* [*Matru v. State of U.P.*, (1971) 2 SCC 75 : 1971 SCC (Cri) 391] that identification test is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines. "

16 Of course, this Court is aware of a line of cases where the Supreme

Court has rejected the Test Identification Parade proceedings on the ground that the photograph of the accused was shown to the witness before the parade. {See **Ravindra @ Ravi Bansi Gohar etc. vs. State of Maharashtra & Others [(1998) 6 SCC 609]** and **Ravi vs. State [(2007) AIR SCW 2740]}**}.  


17 Even in the aforesaid two cases, the Supreme Court did not hold that the dock identification should be eschewed. But, the Supreme Court held that on account of the photographs having been shown to the witness, the Test Identification Parade became a farce and on facts, the testimony of the identifying witness was disbelieved.

18 To sum up, if the victim had seen the accused in the police station that, by itself, cannot vitiate the dock identification which is a substantive piece of evidence. A judicially trained mind can easily balance the compulsions of investigation and filter the testimony of the identifying witness and arrive at a just conclusion.

19 In this case, Lakshmi (P.W.1) has stated in the chief-examination as follows:



"On 31.10.2010, around 7.30 p.m., my husband received a phone call from the police station saying that they have caught the thief and asking us to come there. Four persons were kept in the police station and I was asked as to who these people are. I pointed out at one person, viz., A1 and showed him as the person who pulled my chain and that person is A1."

20 At the first instance, the learned Public Prosecutor should not have let in this evidence, because, the statement of Lakshmi (P.W.1) to the police identifying Manikandan (A1) as the person who pulled her chain, is hit by Section 162 of the Code in the light of the law laid down by the Supreme Court in **Ramkishan Mithanlal Sharma vs. State of Bombay [AIR 1955 SC 104]**, which view was reiterated by the Supreme Court in **Malkhansingh vs. State of Madhya Pradesh [(2003) 5 SCC 746]**, the relevant passage of which reads thus:

"7. . . . . The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact."

(Emphasis supplied)

21 In this case, after having shown the accused to Lakshmi (P.W.1) in the police station, the police did not arrange any Test Identification Parade by a Magistrate, because, it would have been a farce. They left it to the wisdom of

the Court to assess the evidence of Lakshmi (P.W.1) and arrive at a just conclusion. Had the police arranged a Test Identification Parade after having shown the accused to Lakshmi (P.W.1) in the police station, then, there would be every reason for this Court to suspect the *bona fides* of the Test Identification Parade and that would have had a bearing while assessing the dock identification.

22 A legally sound defence counsel will not ask the witness "*Did you identify the accused in the police station?*", because, he will know that the answer to the question will be hit by Section 162 Cr.P.C. and will not be recorded by the Presiding Officer. Instead, what he would ask is, "*Did you happen to see the accused in the police station?*" When this question is asked, a truthful witness will invariably say "Yes". To say that the answer "Yes" vitiates the dock identification would clearly amount to discouraging truth and encouraging falsehood. Therefore, as a principle of law, it cannot be said that seeing the accused in the police station or identifying the accused to the police officer in the police station would *ipso facto* vitiate the dock identification and obliterate the effect of Section 9 of the Evidence Act. Seeing the accused in the police station will be a conduct of the witness relevant under Section 8 of the Evidence Act and this cannot make the dock identification, which is relevant under Section 9, *ibid*, irrelevant. At the most, the Court will be required to be more circumspect while cumulatively evaluating the evidence on record.

23 In this case, the evidence of Lakshmi (P.W.1) does inspire the confidence of this Court and she identifying the accused in the police station, has not, in any way, shaken her testimony. No ill will or motive has been suggested to her by the defence for falsely implicating the accused.

24 In the result, this Court does not find any infirmity in the judgment of the Trial Court warranting interference. Accordingly, the conviction of Manikandan (A1) under Section 392 read with Section 397 IPC stands confirmed. However, the sentence of 7 years rigorous imprisonment awarded by the Trial Court is reduced to 5 years.

With the above modification, this Criminal Appeal stands dismissed. Connected Crl.M.P.No.5255 of 2017 is closed.

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**19.12.2017**

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**P.N. PRAKASH, J.**

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To

- 1 The Inspector of Police  
Arachalur Police Station  
Erode District
- 2 The Mahila Sessions Judge  
(Fast Track Court)  
Erode
- 3 The Public Prosecutor  
High Court of Madras  
Chennai 600 104



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