

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Date: 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.Nos.696 and 725 of 2008

1.Rajendran  
2.Dhanapal

... Appellants/Accused 4 & 5  
(in Crl.A.No.696 of 2008)

1.Ramasamy @ Ramu  
2.Myilraj

... Appellants/Accused 1 & 2  
(in Crl.A.No.725 of 2008)

State, rep. by  
The Inspector of Police,  
Tiruppur North Police Station,  
Tiruppur,  
Coimbatore District.  
(Crime No.1133 of 2004)

vs.

... Respondent  
(in both appeals)

Criminal appeals preferred under Section 374(2) Cr.P.C.,  
against the judgement dated 19.08.2008 passed by the learned  
Additional District and Sessions Judge, (Fast Track Court No.IV),  
Coimbatore at Tiruppur, in S.C.No.338 of 2006.

For Appellants : Mr.V.Parthiban  
(in Crl.A.No.696 of 2008)

Mr.P.M.Duraisamy  
(in Crl.A.No.725 of 2008)

For Respondent : Mrs.M.F.Shabana  
Government Advocate(Crl. Side)  
(in both appeals)

### COMMON JUDGMENT

The accused 1,2,4 and 5, in Sessions Case No.338 of 2006, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.IV), Coimbatore at Tiruppur, are the appellants herein. Totally, there are five accused in this case. They stood charged for an offence under Section 395 IPC. The trial Court, after trial, by Judgment dated 19.08.2008, convicted all the accused for the above offence and sentenced them to undergo seven years rigorous imprisonment, and imposed a fine of Rs.1000/- in default, to undergo 6 months rigorous imprisonment. Challenging the above said conviction and sentence, A-1 and A-2 filed the criminal appeal in Crl.A.No.725 of 2008, and A-4 and A-5 filed the criminal appeal in Crl.A.No.696 of 2008 before this Court.

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

P.W.1, is a resident in Mariamman Kovil Street, Thirumalai Nagar, Tiruppur. On 24.05.2004 at about 8.00 p.m., while P.Ws.1 and 2 watching T.V., three persons, namely, A1 to A3 went inside the house and two other persons standing out side of the house. When P.W.2 questioned them, they pushed her, and A-1 attacked P.W.1, with a knife on his left thigh, and in the left leg. A-2 attacked him with wooden log on his head, and A-3 twisted his hand and removed gold chain. Then, A-1 to A-3, removed the TV, VCD Player

and cash of Rs.2,000/- from the house and took his motor cycle and fled away. On the next day morning at about 7.00 a.m., P.W.1 went to the police station and lodged a complaint[Ex.P1].

(ii) P.W.7, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No.1133 of 2004 for the offence under Section 394 IPC, prepared a first information report [Ex.P9] and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. He sent P.W.1 to the Government Hospital for taking treatment with memo.

(iii) P.W.8, the Inspector Police, working in the respondent police station, on receipt of the first information report, commenced investigation. On 26.05.2004 at about 4.00 p.m., while he was on a vehicle inspection, A4 and A5, came in a motor cycle and when he enquired them, they have voluntarily given confession admitting the guilt and based on the disclosure statement of A-4, P.W.8 recovered M.O.3 knife, and cash for a sum of Rs.450/- stolen from the House of P.W.1 and he also seized the motor cycle. Based on the disclosure statement of A-5, he seized M.O.4 knife and cash of Rs.400/-, which was stolen from the house of P.W.1. Then, he remanded them to Judicial custody. Subsequently, based on the investigation, he altered the first information report into Sections 394 and 395 IPC and prepared alteration report[Ex.P10].

(iv) P.W.11, the Deputy Superintendent of Police,

Udumalpet, continued the investigation. As the first accused was already arrested and remanded to the Judicial custody in some other case, and took him to the police custody. In the Police custody, A-1 voluntarily given a confession and based on the disclosure statement, he recovered a knife M.Os.3 and 4. Then, he handed over the investigation to P.W.12.

(v) P.W.12, the Assistant Commissioner of Police, Tiruppur North, continued the investigation. The second accused was already arrested and remanded to the Judicial custody in some other case and took him to the police custody. In the Police custody, A-2 has voluntarily given a confession and based on the disclosure statement, he recovered VCD Player stolen from the house of P.W.1. Then, he arrested A-3, on such arrest, he also voluntarily given confession, based on the disclosure statement, he recovered a T.V. [M.O.1]. He examined the witnesses and recorded their statements. In the meantime, P.W.6, the Doctor, working in the Government Hospital, Tirupur, examined P.W.1. At that time, P.W.1 told her that on 24.05.2004 at about 8.00 p.m., six known persons attacked him with knife, and the Doctor found three lacerated injuries, and he was of the opinion that the injuries are simple in nature and he issued Accident Register [Ex.P7]. P.W.12 examined P.W.6, and other witnesses, recorded their statements and after completion of investigation he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 12 witnesses were examined and 21 documents were exhibited, and 6 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the victim in this case. According to him, on 24.05.2004 at about 8.00 p.m., while he was watching TV, three known persons, namely, A1 to A3 entered into his house, attacked him with knife and wooden log also stolen the household properties, then took the motor cycle and fled away. P.W.2 is wife of P.W.1. She is also an eye witness to the occurrence. According to her, while she watching T.V., A1 to A3 came inside the house, when she questioned them, they pushed her down, then they attacked her husband with knife and wooden log. P.W.3 is house owner of P.W.1. According to him, on 24.05.2004 at about 9.00 p.m., there was a crowd in the house of P.W.1, when he was questioned P.W.1, P.W.1 told him that there was a small dispute and it was settled. On the next day morning, police prepared observation mahazar and he is a witness to the observation mahazar. P.W.4 and P.W.5 are witness to the arrest of A-3 and recovery of cash and knife. P.W.6 is the Doctor working in the Government Hospital, Tiruppur. According to her, she examined

P.W.1 and issued Accident Register [Ex.P7]. P.W.7 is the Sub Inspector of Police working in the respondent police station. He has stated that on receipt of the complaint from P.W.1, registered the case, prepared first information report and sent the same to the Judicial Magistrate Court, and copies of the same to the higher officials. P.W.8 is the Inspector of Police working in the respondent police station. He deposed that on receipt of the first information report, commenced investigation, arrested A4 and A5 and seized material objects. P.W.9 and P.W.10 are witness to the arrest of A-1 and A-2, and recovery of knife and cash, but both turned hostile. P.W.11 is the Deputy Superintendent of Police working in the respondent police station. According to him, on receipt of the First Information Report, he commenced the investigation, and based on the confession of A1, he recovered M.Os.3 and 4 and then handed over the case to P.W.12. P.W.12, the Assistant Commissioner of Police, continued the investigation, based on the disclosure statement of A2 and A3, he recovered materials objects, examined the Doctor, who has given treatment to P.W.1 and other witnesses, and recorded their statements, after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false.

Their defence was a total denial. The accused examined one Kandhasamy as D.W.1 who is father A1 and A2 and exhibited 2

documents. According to D.W.1, he know P.W.1 and there was a money dispute between D.W.1 and P.W.1 and P.W.1 also given complaint against him. P.W.4 is the own brother of P.W.1, and he has given evidence in the criminal case filed against D.W.1. The said first information report was marked as Ex.D1, and the Judgment was marked as Ex.D2.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court with this appeal.

7. I have heard Mr.V.Parthiban, the learned counsel appearing for the appellants in Crl.A.No.696 of 2008, and Mr.P.M.Duraisamy, the learned counsel appearing for the appellants in Crl.A.No.725 of 2008 and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the respondent and perused the materials available on record.

8. The occurrence said to have taken place on 24.05.2004 at about 8.00 p.m., in the house of P.W.1 and subsequently, P.W.1 lodged a complaint before the respondent police on the next day morning i.e., on 25.05.2004. Subsequently, the first information report was received by the Judicial Magistrate Court on 27.05.2004

at about 6.00 p.m. In the complaint[Ex.P1], P.W.1 has stated that due to previous motive, A1 to A3 along with two other persons entered into his house and attacked him with knife and wooden log. Since P.W.1's son and A-1 were involved in another criminal case, in which, P.W.1's son alone came out on the way and due to the above enmity, the accused attacked him with knife and wooden log and they stolen the TV, VCD Player, Gold ring and motor cycle from his house. Since some injuries were found on P.W.1, he was sent the Hospital for treatment with memo by the respondent police. P.W.6, the Doctor, working in the Government Hospital, Tiruppur, examined P.W.1 at 11.40 a.m. At that time, P.W.1 told her that six unknown persons attacked him and to that effect he has given accident register Ex.P7 and wound certificate Ex.P8 and P.W.6 found only 3 abrasions in the upper arm and thigh and he found the injuries are simple in nature. Subsequently, while P.W.1 deposed before the Court has stated that three known persons, namely, A-1 to A-3 went inside the house and two persons standing outside the house and A1 to A3 attacked him with knife and wooden log and they were stolen the property from his house. From the evidence of P.W.1, there are lot of contradictions. In his complaint Ex.P1, he has stated that two known persons and two unknown persons due to some previous enmity had committed the crime. Subsequently, while he was given evidence and stated that three known persons and two unknown persons entered into his house and attacked him

and stolen the properties. The above said contradictions clearly creates doubt over the truthfulness of the evidence of P.W.1.

9. Apart from that there is also a delay in filing the FIR and the same was reached the Judicial Magistrate Court only after two days and no proper explanation was given by the prosecution, for the delay in filing the FIR as well as despatching the FIR to the concerned Court. So far as the recovery is concerned, the recovery mahazar witnesses, namely, P.Ws.9 and 10 turned hostile and it is difficult to believe the recovery of alleged stolen properties. So far as A4 and A5 are concerned, even though P.W.1 stated that two unknown persons standing outside the house and he did not identify A4 and A5, and no test identification was conducted in this regard. P.W.4 is witness to the recovery and he is the own brother of P.W.1. In his cross examination, P.W.4 stated that P.W.1 is not his brother and only known to him. Hence, it is difficult to believe the evidence of P.W.4 regarding the recovery of material objects. Another eye witness to the occurrence P.W.2 is the wife of P.W.1 and she is an interested witness. Apart from that there is one more witness P.W.3, who is the owner of the house, where, P.W.1 was residing. According to him, on the date of occurrence at about 9.00 pm., there was a crowd in the house of P.W.1, according to him when he was questioned P.W.1, he told that there was a minor problem and it will be settled, at that time P.W.1 did not state any thing about the theft to him, it is also creates a doubt about the

prosecution case. In the above circumstances, I am of the considered view that the prosecution has failed to prove the case beyond any reasonable doubt. Hence, the appellants/accused are entitled for acquittal. The court below without considering the evidence in proper perspective convicted the appellants.

10. In the result, the Criminal Appeals are allowed. The conviction and sentence imposed on the appellants/accused in S.C.No.338 of 2006 dated 19.08.2008 on the file of the learned Additional District and Sessions Judge,(Fast Track Court No.4), Tiruppur is set aside, and the appellants/accused are acquitted from all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts paid by them are ordered to be refunded forthwith.

**08.02.2017**

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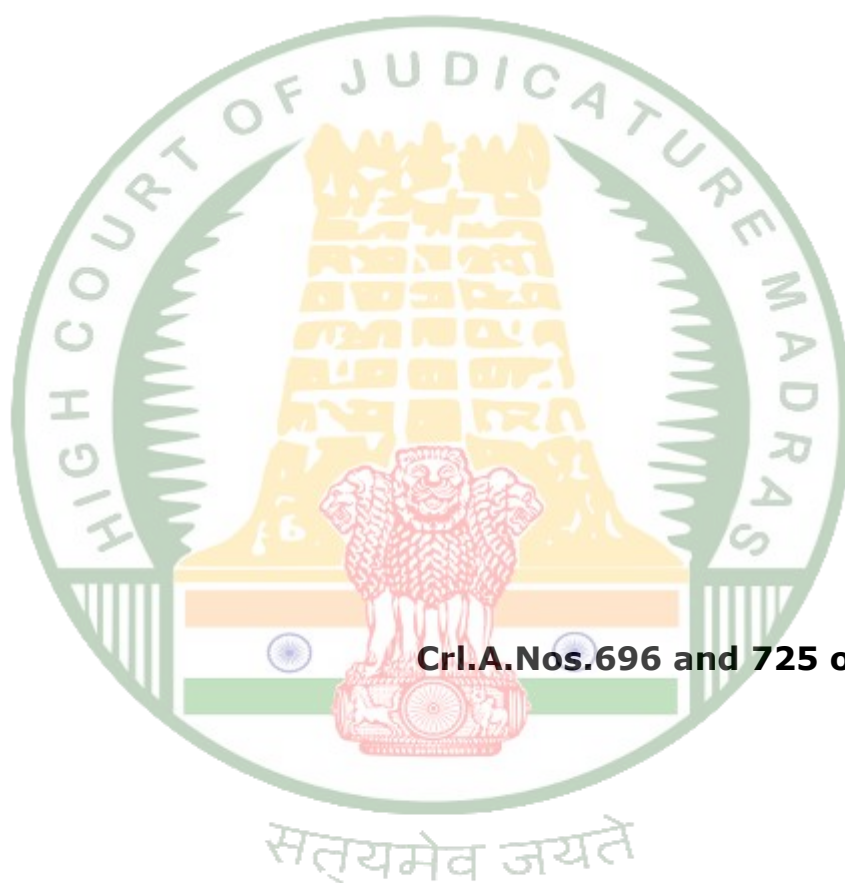
1.The Additional District and Sessions Judge,  
Fast Track Court No.IV,  
Coimbatore at Tiruppur.

2.The Inspector of Police,  
Tiruppur North Police Station,  
Tiruppur, Coimbatore District.

3.The Public Prosecutor,  
High Court, Madras.

**V.BHARATHIDASAN.J.,**

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