

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 11.07.2019****CORAM :**

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**CRL A (MD)No.250 of 2010**

State, rep.by
The Inspector of Police,
Kumbakonam East Police Station,
Thanjavur District.
(crime no.422 of 2006) ... Appellant/Complainant

Vs.

1.Vijayakumar
2.Ravikumar
3.Sakthivel
4.Raja
5.Ramesh
6.Adaikalaraj ... Respondents/Accused

Prayer : This Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to set aside the judgment of acquittal dated 29.07.2009 in S.C No.123 of 2008 on the file of the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam and convict the respondent/accused A1 to A6.

For Appellant	:	Mr.A.Robinson Government Advocate (crl.side)
For R1 and R2	:	Mr.K.Senthilkumar
For R3	:	Mr.A.Thiruvadikumar
For R4 & R5	:	Mr.B.Jameel Arasu
For R6	:	Mr.A.Arun Prasad

JUDGMENT

The respondents herein who are six in number were charged with the offences under Sections 120(b), 386, 364(A) and 395 IPC in S.C No.123 of 2008 on the file of the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam. The said case ended in acquittal on 29.07.2009. Challenging the judgment of acquittal, this criminal appeal has been filed.



2.The learned Government Advocate (crl.side) appearing for the appellant/State reiterated all the contentions set out in the memorandum of grounds and wanted this Court to reverse the judgment of the trial court. Per contra, the learned counsel appearing for the accused submitted that the judgment of acquittal is a well considered one and that it does not warrant any interference.

3.I carefully considered the rival contentions and perused the evidence on record. The case of the prosecution is that the main accused Vijayakumar was the driver of the family of the defacto complainant. P.W.1 is the defacto complainant while P.W.2 is the son. P.W.2 was taken by Al Vijayakumar in the car when he was said to have been kidnapped on 30.06.2006 at about 05.30 P.M. According to the prosecution, the first accused was taking the boy from his car. Based on the complaint given by P.W.1, Crime No.422 of 2006 was registered on the file of the Inspector of Police, Kumbakonam Police Station. Investigation was undertaken and final report was filed. Cognizance of the offences mentioned above was taken. The accused pleaded not guilty and claimed to be tried. The prosecution examined 18 witnesses and marked Exs.P1 to P34. M.O.1 to M.O.8 were also marked. On the side of the accused, no evidence was adduced. The learned Trial Magistrate after a detailed consideration of the evidence on record, chose to acquit the accused. It is this acquittal that is challenged in this appeal.

4.The learned counsel appearing for the respondents would point out that even though P.W2 had deposed rather elaborately in the court, he failed to specifically identify the accused in the court. It is well settled that identification in a test parade is not a substantive evidence and that there must be specific identification in the court which alone would constitute substantive evidence. In as much as there is no identification of the accused by P.W.2, the entire prosecution has to necessarily fail.

5.I am in full agreement with the submission of the learned counsel for the respondents. As rightly pointed out by the learned counsel for the respondents, the testimony of P.W.2 does not show any credibility at all. P.W.2 was not a small boy. He was aged about 17 years. The things stated before the court by him were not stated before the Investigation Officer while recording his statement under Section 161 of Cr.PC. It is relevant to note here that P.W.2 did not suffer any injury. The occurrence itself is more than 13 years old. It is also to be noted that except the fifth respondent herein namely Ramesh, <https://hccourtservice.hccourtservice.com> come under any adverse notice thereafter.

6.Taking note of all these aspects, I am of the view that the



impugned judgment of the court below does not warrant any interference. This appeal stands dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Chief Judicial Magistrate, Thanjavur at Kumbakonam.
2. The The Inspector of Police, Kumbakonam East Police Station, Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.A.THIRUVADI KUMAR, Advocate (SR-75270[F] dated 15/07/2019)

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