

BAIL SLIP

CRL.RC.NO. 1384 OF 2012:

The Petitioner/Accused No. 9, viz, Madanur Ravi, S/o.Selvam was directed to be released on bail as per order of this court dated 06/06/2012 and made in Crl.M.P.No. 1 of 2017 in Crl.RC.No. 1384 of 2012.

CRL.RC.NO. 1397 OF 2012:

The Petitioner/Accused No.7, viz, Sakthi @ Sakthivel, was directed to be released on bail as per order of this court dated 12/06/2013 and made in Crl.M.P.No. 3 of 2013 in Crl.RC.No. 1397 of 2012.

CRL.RC.NO. 190 OF 2013

The Petitioner/Accused No. 10 & 12, viz, 1. Vasanth Kumar (A-10), S/o.Sugumar, 2.Kutty (A-12) S/o.Perumal, respectively were released on bail as per order of this court dated 07/06/2013 and made in M.P.No.3 of 2013 of 2017 in Crl.RC.No. 190 of 2013.

CRL.RC.NO. 561 OF 2013:

The Petitioner/Accused No. 1, viz, Vetri @ Vetrivel S/o.Palani, was directed to be released on bail as per order of this court dated 06/06/2012 and made in Crl.M.P.No. 1 of 2013 in Crl.RC.No.561 of 2013.

IN THE HIGH COURT OF JUDICTURE AT MADRAS

RESERVED ON: 20.12.2019

DELIVERED ON: 09.01.2020

CORAM:

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

Crl.R.C. Nos.1384 & 1397 of 2012 and 189, 190 & 561 of 2013

Madanur Ravi Petitioner in Crl.R.C. No.1384 of 2012/A.9

Sakthi @ Sakthivel Petitioner in Crl.R.C. No.1397 of 2012/A.7

Seenu @ Srinivasan Petitioner in Crl.R.C. No.189 of 2013/A.8

1. Vasanth Kumar

1st Petitioner in Crl.R.C. No.190 of 2013/A.10

2. Kutty

2nd Petitioner in Crl.R.C.No.190 of 2013/A.12

Vetri @ Vetrivel Petitioner in Crl.R.C. No.561 of 2013/A.1

vs.

State represented by
the Sub-Inspector of Police
Veppanapalli Police Station
Krishnagiri District
Cr. No.113 of 2006

Respondent/Complainant in all the Crl.R.Cs.

Prayer in Crl.R.C. No.1384 of 2012:

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 27.03.2012 passed by the Additional Sessions Judge, Krishnagiri in Crl.A. No.4 of 2011 confirming the judgment and order dated 14.12.2010 passed by the Principal Assistant Sessions Judge, Krishnagiri in S.C. No.121 of 2008.

Prayer in Crl.R.C. No.1397 of 2012:

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 27.03.2012 passed by the Additional Sessions Judge, Krishnagiri in Crl.A. No.75 of 2010 confirming the judgment and order dated 14.12.2010 passed by the Principal Assistant Sessions Judge, Krishnagiri in S.C. No.121 of 2008.

Prayer in Crl.R.C. No.189 of 2013:

Criminal Revision filed under Section 397 (i)r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 27.03.2012 passed by the Additional Sessions Judge, Krishnagiri in Crl.A. No.77 of 2010 confirming the judgment and order dated 14.12.2010 passed by the Principal Assistant Sessions Judge, Krishnagiri in S.C. No.121 of 2008.

Prayer in Crl.R.C. No.190 of 2013:

Criminal Revision filed under Section 397 (ii)r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 27.03.2012 passed by the Additional Sessions Judge, Krishnagiri in Crl.A. No.75 of 2010 confirming the judgment and order dated 14.12.2010 passed by the Principal Assistant Sessions Judge, Krishnagiri in S.C. No.121 of 2008.

Prayer in Crl.R.C. No.561 of 2013:

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 27.03.2012 passed by the Additional Sessions Judge, Krishnagiri in Crl.A. No.75 of 2010 confirming the judgment and order dated 14.12.2010 passed by the Principal Assistant Sessions Judge, Krishnagiri in S.C. No.121 of 2008.

For petitioners in
Crl.R.C.1384/2012 & 561/2013

Mr. S. Xavier Felix

For petitioner in
Crl.R.C. No.1397/2012

Mr.C.D. Johnson
for Mr. S. Vijay

For petitioners in
Crl.R.C.Nos.189 & 190/2013

Mr. K. Gandhikumar

For respondent/State

Mrs. P. Kritika Kamal
Govt. Advocate (Crl. Side)

COMMON ORDER

Since these criminal revisions emanate from the same judgments and orders and FIR, they are considered and decided by this common order.

2 Shorn of the minute details, the facts germane and necessary for deciding the cases at hand are stated thus:

2.1 Ganesh (P.W.1) is a Kannadiga from Bengaluru and he is into construction work. He had a contract work in Kuppam Village in Andhra Pradesh. Therefore, on 07.03.2006, he went to Kuppam Village along with his friends, viz., Naveen Kumar (P.W.2), Rajkumar (not examined) and Prateesh (not examined), all Kannadigas, by Maruti Alto car bearing Regn. No.KA 09 N 3956 (M.O.8).

2.2 Krishnagiri District in Tamil Nadu shares common border with Karnataka and Andhra Pradesh. The route from Bengaluru in Karnataka to Kuppam Village in Andhra Pradesh is via Krishnagiri District. The four were returning by Maruti Alto car (M.O.8) from Kuppam Village around 9.45 p.m. on 07.03.2006. When their car was passing through Veppanapalli Road in Tamil Nadu on its way to Bengaluru, it was hit from behind by a Toyota Qualis car bearing Regn. No. TN 27 R 2075 (M.O.9); after hitting the Maruti Alto car (M.O.8), the Toyota Qualis car (M.O.9) overtook the Maruti Alto car (M.O.8) and stopped in front of it. Around 6 or 7 persons got down from the Toyota Qualis car (M.O.9) and picked up a quarrel with the four, forcibly bundled them into their Toyota Qualis car (M.O.9) and took them to a hut in a far-flung place and confined them there. The four were beaten and their possessions relieved. While the four were in the hut, they found another man also in that hut who is Manimaran (P.W.1 in S.C.No.120 of 2008).

2.3 On 12.03.2006, in the afternoon, the said Manimaran escaped from there on the pretext of going to the nearby well for having bath, owing to which, there was a commotion. These four persons cashed in on that opportunity and they also

car (M.O.8). They were advised to go to Tamil Nadu and lodge a police complaint.

2.4 Accordingly, Ganesh (P.W.1) went to Veppanapalli Police Station on 13.03.2006 and gave a statement which was recorded in Tamil, beneath which, he endorsed in Kannada that it was read over to him and explained.

2.5 Based on the statement of Ganesh (P.W.1), the police registered a case in Veppanapalli P.S.Cr. No.113 of 2006 on 13.03.2006 and prepared the printed FIR (Ex.P.18). The original complaint and the printed FIR reached the jurisdictional Magistrate on 13.03.2006 at 6.00 p.m.

2.6 Ganesh (P.W.1) and Naveen Kumar (P.W.2) were taken to the Government Hospital, Krishnagiri, where, they were examined by Dr.Gopalakrishnan (P.W.8) at 4.00 p.m. on 13.03.2006.

2.7 Ganesh (P.W.1) had the following injuries and the wound certificate was marked as Ex.P.20.

- contusion on the back;
- contusion on the left shoulder;
- swelling on the right hand finger knuckles and wrist; and
- contusion with swelling on the left face.

2.8 Naveen Kumar (P.W.2) had the following injuries and the wound certificate was marked as Ex.P.19.

- abrasions on the right neck;
- contusion in the right arm;
- contusion in the left arm;
- swelling on the left stomach; and
- contusion on the head;

2.9 At this juncture, it may be relevant to state here that the person who first escaped from the hut was Manimaran (P.W.1 in S.C. No.120 of 2008), referred to in paragraph 2.2 above, who was abducted and kept in that hut. On his complaint, the police had registered a case in Cr. No.110 of 2006 on 12.03.2006.

2.10 After the registration of the present case, viz., Cr. No.113 of 2006, the investigation was beefed up, because, it became obvious to the police that the Highway was unsafe for travellers.

2.11 The breakthrough in this case came with the arrest of Vetri @ Vetrivel (A.1) from whom, the police learnt about

the names of all the other persons involved in the two cases and went about hunting for them inter-State.

2.12 Inasmuch as the accused were involved in two cases of abduction and robbery, their arrest had led to recovery of robbed items involved in both the cases and the panchanamas were common to both, though marked separately.

2.13 The tabular column below will throw light on the particulars of the persons arrested and the items recovered from their possession:

Name of Accused & rank	Date of arrest	Mahazar / Panchanama	M.O. Recovered	Witness
Vetri @ Vetrivel (A1)	14.03.2006	Ex.P8	Cash Rs. 250	P.W. 3 Subramani along with Kalyanaraman (not examined)
Siva @ Sivakumar (A2)	15.03.2006	Ex.P.10	Cash - Rs.540/-	-do-
Rajkumar @ Rasukutty (A3)	15.03.2006	Ex.P.12	Cash - Rs.300/-	-do-
Ravi (A4)	14.03.2006	Ex.P.9	Cash - Rs.275/-	-do-
Suresh (A5)	15.03.2006	Ex.P.11	Cash Rs.250/-	-do-
Shanmugam (A6)	14/15.03.2006	Ex.P-13	Qualis Car TN 27 R 2075 (M.O.9)	-Do-

Name of Accused & rank	Date of arrest	Mahazar / Panchanama	M.O. Recovered	Witness
Sakthi @ Sakthivel (A7)	21.03.2006	Ex.P-17	1.Cash 1500 2.Elephant Hair Ring (MO 5) (P.W.1 identified Pratheesh (N/E) 's ring) 3.Chain (MO 6) of Rajkumar 4.Samsung Phone (MO 1)	P.W.4 Anbalagan along with one Subru

Seenu @ Srinivasan (A8)	20.04.2006	No Recover y	Identified Scene of Occurrence	Kalyanaram an and Thimappan
Madanur Ravi (A9)	Abscond ing C/s	N/A	N/A	N/A
Vasanthakumar (A10)	11.07.06	N/A	N/A	N/A
Vadivel (A11)	Abscond ing C/s	N/A	N/A	N/A
Kutty (A12)	Abscond ing C/s	N/A	N/A	N/A
Rajendran (split up accused)	21.03.2006	Ex.P-16	Alto Car KA 09 N 3956 (MO 8) Nokia mobile phones (MOs 2-4)	P.W. 4 Anbalagan along with one Subru

2.14 Rajendran (absconding accused) and Sakthi @ Sakthivel (A.7) were arrested by the police on 16.03.2006 in connection with a case of robbery in Cr. No.186 of 2006 and were in judicial custody. This robbery had taken place on 16.03.2006. Therefore, the police effected notional arrest of Rajendran (absconding accused) and Sakthi @ Sakthivel (A.7) in this case on 21.03.2006 and took them into police custody.

2.15 The police were unable to arrest Vasanth Kumar (A.10), but, he surrendered before the Court on 11.07.2006 and he was taken into judicial custody in this case.

2.16 From the above, it is discernible that out of the twelve accused involved in this case, nine of them were taken into judicial custody and three of them, viz., Madanur Ravi (A.9), Vadivel (A.11) and Kutty (A.12) were in abscondence.

2.17 After examining witnesses and obtaining various reports, the police completed the investigation and filed a final report in P.R.C. No.12 of 2007 before the Judicial Magistrate, Krishnagiri under Sections 343, 347, 365, 368 and 395 IPC against 13 accused, viz., Rajendran, Vetri @ Vetrivel Siva @ Sivakumar, Rajkumar @ Rasukutty, Ravi, Suresh, Shanmugam @ Shanmugasundaram, Sakthi @ Sakthivel, Seenu @ Srinivasan, Madanur Ravi, Vasanth Kumar, Vadivel and Kutty. In the final report, Madanur Ravi (A.9), Vadivel (A.11) and Kutty (A.12) were shown as absconding accused.

2.18 During the committal proceedings, Rajendran absconded and Madanur Ravi (A.9) Vadivel (A.11) and Kutty (A.12) surrendered before the Court. Therefore, the case against Rajendran was split up as S.C. No.96 of 2013 (P.R.C. No.15 of 2008) and the case in respect of available 12 accused was committed to the Court of Session in S.C. No.121 of 2008 and was made over to the Assistant Sessions Court,

2.19 The trial Court framed charges under Sections 343, 347, 365, 368 and 395 IPC. When questioned, the accused pleaded not guilty.

2.20 For the occurrence that took place on 07.03.2006, the trial effectively commenced only in January 2010, with the examination of Ganesh (P.W.1). The prosecution examined 10 witnesses and marked 23 exhibits and 9 material objects.

2.21 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. On their side, 4 witnesses were examined and 6 exhibits were marked.

2.22 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 14.12.2010 in S.C. No.121 of 2008, acquitted Rajkumar @ Rasukutti (A.3), Ravi (A.4), Suresh (A.5) and Shanmugam @ Shanmugasundaram (A.6) since the charges were not proved beyond reasonable doubt, but, convicted Vetri @ Vetrivel (A.1), Siva @ Sivakumar (A.2), Sakthi @ Sakthivel (A.7), Seenu @ Srinivasan (A.8), Madanur Ravi (A.9), Vasanth Kumar (A.10), Vadivel (A.11) and Kutty (A.12), based on the identification of them by Ganesh (P.W.1) in the dock and sentenced them as under:

Name of accused & Rank	Provisions under which convicted	Sentence
Vetri @ Vetrivel (A.1)	S.395 IPC	7 years R.I. and fine of Rs.3,000/- each, in default to undergo 3 months S.I.
Siva @ Sakthivel (A.2)		
Sakthi @ Sakthivel (A.7)	S.368 IPC	3 years R.I. and fine of Rs.1,000/- each, in default to undergo 3 months S.I.
Seenu @ Srinivasan (A.8)		
Madanur Ravi (A.9)	S.347 IPC	2 years R.I. and fine of Rs.1,000/- each, in default to undergo 3 months S.I.
Vasanth Kumar (A.10)		
Vadivel (A.11)		
Kutty (A.12)		

The aforesaid sentences were ordered to run concurrently.

2.23 The appeals in CrI.A. No.75 of 2010 preferred by Vetri @ Vetrivel (A.1), Sakthi @ Sakthivel (A.7), Vasanth Kumar (A.10), Vadivel (A.11) and Kutty (A.12), CrI.A. No.77 of 2010 preferred by Siva @ Sivakumar (A.2) and Seenu @ Srinivasan (A.8) and CrI.A.No.4 of 2011 preferred by the

Madanur Ravi (A.9) before the Additional Sessions Court, Krishnagiri, were dismissed vide a common judgment and order dated 27.03.2012, confirming the judgment and order dated 14.12.2010 passed by the trial Court.

2.24 Aggrieved by the concurrent findings of fact arrived at by the two Courts below, the instant criminal revisions have been preferred. Seemingly, Siva @ Sivakumar (A.2), son of Muniappan and Vadivel (A.11), son of Muniraj, have not preferred revision questioning the legality and validity of the concurrent finding of facts arrived at by the two Courts below, as per the records available before this Court.

3 Heard Mr. Xavier Felix, learned counsel for the petitioners in CrI.R.C.Nos.1384 of 2012 and 561 of 2013, Mr. C.D. Johnson, learned counsel representing Mr. S. Vijay, learned counsel on record for the petitioner in CrI.R.C. No.1397 of 2012, Mr. K. Gandhikumar, learned counsel for the petitioners in CrI.R.C. Nos.189 and 190 of 2013 and Mrs.P.Kritika Kamal, learned Government Advocate (CrI. Side) appearing for the respondent/State.

4 It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error..... "

5 Coming to the cases at hand, it may be necessary to allude to the evidence of the defence witnesses, viz., D.W.1 to D.W.4 and defence exhibits, viz., Exs.D.1 to D.5, at the outset.

6 Vidyasagar (D.W.1), Ammasi (D.W.2), Rajkumari (D.W.3) and Palaniammal (D.W.4) have stated in their evidence that Rajkumar @ Rasukutti (A.3), Ravi (A.4) and Suresh (A.5) were picked up by the police on 11.03.2006 itself and therefore, they had sent telegrams to the higher police officials vide Exs.D.1 to D.5. The trial Court has disbelieved their evidence on the ground that the telegrams, viz., Exs.D.1 to D.5, were sent only on 15.03.2006, whereas, the police had

1 (2004) 7 SCC 659

<https://hcservices.ecourts.gov.in/hcservices/>

2 (2019) 4 SCC 197

arrested them earlier. The trial Court has rightly held that the telegrams have been contrived subsequent to the arrest of the accused by their relatives.

7 Be that as it may, since Rajkumar @ Rasukutti (A.3), Ravi (A.4) and Suresh (A.5) have been acquitted by the trial Court extending benefit of doubt in their favour, on the ground that they were not identified by Ganesh (P.W.1) in the dock, this Court need not detain itself in discussing the evidence of D.Ws.1 to 4 any further.

8 Ganesh (P.W.1) is a Kannadiga from Bengaluru and he has given evidence in Kannada, which has been translated into Tamil, with the help of a Translator by name R. Srinivasan. The free English translation of his evidence is as follows:

"I am residing in T.K. Nagar, Bengaluru. I am into fixing iron rods for construction work. Along with me, Naveen Kumar, Rajkumar (not examined), Prateesh (not examined) are there. Wherever I get building contract work, I used to go there and work. On 07.03.2006, I went to Kuppam in Andhra Pradesh for fabrication work. I was returning with my friends by Maruti Alto car. We were to take up the KGF Road, but, were told that repair works are going on in that road and so, we decided to go by Veppanapalli Road. From Kuppam, while we were going by Veppanapalli Road, we were hit from behind by a maroon colour Toyota Qualis car. After dashing us from behind, the Toyota Qualis car overtook us and stopped in front of us. The time was then around 9.45 p.m. and there were about 8 persons in that Toyota Qualis car. They started to beat and kick us. One of them is not in the dock. The others are A.1, A.3, A.6, A.11 and A.12 (The witness identified A.1 by touching him). A.1 used a stick to beat us and Rajendran beat us with his slippered foot. They took us to a hut and kept us there for five days and tortured us. I had a Nokia mobile phone and cash of Rs.5,000/-, which they took away from me. In the hut, we saw another person who was being beaten by them. They told us that we will also get the same treatment that was being given to him. We were kept in confinement for five days. From us, they took away one mobile phone and a gold ring. They also took away our Maruti Alto car. On the afternoon of 12.03.2006, the other person escaped when he went for taking bath. There was commotion then. Two persons who were guarding us went out. We gathered courage and ran towards Kuppam. There, I contacted some persons known to my deceased brother. I got some money from them and went by rail to Bengaluru. On reaching Bengaluru, we decided to give a police complaint. A friend of us told us that we should

first consult a lawyer. On the same night, we consulted a lawyer who counselled us that we should go to Tamil Nadu and give a police complaint. So, on 13.03.2006, we, four, came to Hosur and from there, we came to Veppanapalli Police Station and lodged a complaint. Whatever we said was written by the police and at the end, I wrote in Kannada stating that the police read whatever I told them and whatever is written is true. The complaint was marked as Ex.P.1. I sustained injuries on my left eye brow, right knee, back and other places. I took treatment in a hospital in Bengaluru. The value of the things we were relieved of including the Maruti Alto car, will be around Rs.3 lakhs. Vetri @ Vetrivel (A.1), Rajendran (absconding accused), Seenu @ Srinivasan (A.8) and Vasanth Kumar (A.10) were caught by the police. I do not know the names of the others. I came to the police station and identified them. The persons whom I identified in the police station are now available in the Court. They are A.1, A.2, A.3, A.6, A.10 and A.11. I also identified the properties belonging to us. They are a currency note of Rs.500/-, Samsung mobile phone, my friend's Nokia camera cell phone, my friend Naveen Kumar's gold chain, my friend Rajkumar's gold chain, my friend Prateesh's elephant-hair ring. I do not remember the registration number of the car. The Nokia camera phone belonging to Prateesh is M.O.1. The blue colour cell phone belonging to Naveen Kumar is M.O.2. The dark blue cell phone of Rajkumar is M.O.3. The gold ring with elephant hair belonging to Prateesh is M.O.5. The long gold chain of Rajkumar is M.O.6. The short chain of Naveen Kumar is M.O.7. The Maruti Alto car in which we came is M.O.8. The Toyota Qualis car in which the accused came is M.O.9. From the Toyota Qualis car, AA 1,3,6,8,10 and 11 alighted and took us with them.

9 In the cross-examination, Ganesh (P.W.1) has stated that the Maruti Alto car (M.O.8) was driven by Naveen Kumar (P.W.2) and that the car belongs to him. When he (P.W.1) was asked as to whether he took any steps to take custody of the Maruti Alto car (M.O.8), he said that the actual owner alone can file a petition and since they were very busy in their work, they did not pursue the matter any further. He has further stated that the accused did not allow them to contact their families, but, gave them food and allowed them to attend to nature's call. He has further stated in the cross-examination that in the police station, there were Constables who knew to speak Kannada language.

10 The evidence of Ganesh (P.W.1) has been sufficiently corroborated by Naveen Kumar (P.W.2) who identified AA 1, 2 and 8, and also the material objects. Naveen Kumar (P.W.2) has

also stated that originally, the Maruti Alto car (M.O.8) belonged to his wife's sister's husband and that he purchased the said car from him, but, did not have the R.C. book transferred in his name. He has further stated that he made attempts to obtain interim custody of the car but to no avail. It was suggested to Naveen Kumar (P.W.2) that with the help of an abandoned car, the police have foisted this case on the accused, which suggestion, he denied.

11 The recovery of the articles from the accused by the police has been corroborated by Subramanian (P.W.3), V.A.O., Sigaramaranapalli and Anbazhagan (P.W.4), V.A.O., Manavarapalli and the articles have also been identified by Ganesh (P.W.1) and Naveen Kumar (P.W.2) as belonging to them.

12 The contentions put forth by the learned defence counsel and this Court's finding therefor are as under:

i Ganesh (P.W.1) identified only Vetri @ Vetrivel (A.1) by touching him and showing and not the others and ergo, the conviction of the rest of the accused stands vitiated.

This Court's finding:

The fact remains that Ganesh (P.W.1) has given the names of Rajendran (absconding accused), Vetri @ Vetrivel (A.1), Siva @ Sivakumar (A.2), Ravi (A.4), Sakthi @ Sakthivel (A.7), Seenu @ Srinivasan (A.8), Vasanth Kumar (A.10), Vadivel (A.11) and Kutty (A.12) in the complaint (Ex.P.1) itself. He did not know the accused earlier, but, from the conversations they had amongst themselves, he must have got to know of their names, because, he was with them for five days. Pertinent it is to point out that law does not mandate that the witness should go near the accused, touch them and identify them in the Court. It would suffice, if, from the witness box itself, he identifies the accused. In this case, just because Ganesh (P.W.1) touched and identified Vetri @ Vetrivel (A.1), but, did not adopt the same process for identifying A.3, A.6, A.8, A.10, A.11 and A.12, it does not mean that his evidence qua identification should be rejected.

ii Since Ganesh (P.W.1) and Naveen Kumar (P.W.2) did not take interim custody of the Maruti Alto car (M.O.8) and there is no investigation as to in whose name, the said car stands, the prosecution case stands vitiated.

This Court's finding:

The Maruti Alto car (M.O.8) bears Regn. No.KA 09 N 3956 which is of Karnataka State registration. Ganesh (P.W.1) and Naveen Kumar (P.W.2) are from Karnataka. Naveen Kumar (P.W.2) has stated that he bought the car from his co-brother and did not take steps to have the ownership changed in his name. Ganesh (P.W.1) also has stated that they approached an advocate by name Ravindranath Tagore for filing appropriate petition and since the car was not in the name of either

Ganesh (P.W.1) or Naveen Kumar (P.W.2), they did not pursue the matter any further. This explanation given by Ganesh (P.W.1) and Naveen Kumar (P.W.2) merits acceptance. To say that the police had foisted a case on the accused with an abandoned Karnataka registration car is too large a pill for this Court to swallow. If that had been the motive, the police could have easily foisted a case using an abandoned car registered in Tamil Nadu instead of using two Kannadigas and the car registered in Karnataka. That apart, Manimaran (P.W.1 in S.C.No.120 of 2008), who was in illegal confinement, has stated that he saw the accused bringing four Kannada-speaking persons to the hut and beating them. Manimaran (P.W.1 in S.C. No.120 of 2008) escaped from the clutches of the accused on 12.03.2006 and in his written complaint to the police, has stated that four Kannada-speaking persons are in the custody of the accused. Likewise, after Ganesh (P.W.1), Naveen Kumar (P.W.2) and their two friends escaped from the custody of the accused, taking advantage of the commotion that happened after the escape of Manimaran (P.W.1 in S.C. No.120 of 2008), they went to Karnataka, their home State, and on the counsel of a lawyer, went to Veppanapalli Police Station and lodged the complaint in this case, in which, they have also stated about the presence and escape of Manimaran (P.W.1 in S.C. No.120 of 2008) on the previous day. The injuries sustained by Ganesh (P.W.1) and Naveen Kumar (P.W.2) at the hands of the accused which were noted by Dr.Gopalakrishnan (P.W.8) corroborates the prosecution case.

iii Non-conduct of test identification parade vitiates dock identification:

This Court's finding:

As regards the non-conduct of test identification parade, the facts of this case show that Ganesh (P.W.1) and Naveen Kumar (P.W.2) and their two friends were in the custody of the accused for 5 days. The accused abducted them, assaulted them, relieved them of their belongings and stood guard. This long interaction of the witnesses with the accused is sufficient for dock identification. Further, be it noted that non-conduct of test identification parade will not vitiate dock identification in all cases (See Mahabir vs. State of Delhi³).

iv When the accused had detained Manimaran (P.W.1 in S.C.No.120 of 2008) on 12.03.2006, they would not have abducted the four Kannadigas because of their continuous presence with Manimaran (P.W.1 in S.C. No.120 of 2008).

This Court's finding:

There is absolutely no substance in this submission because there is no material to show that all the accused were keeping guard of Manimaran (P.W.1 in S.C. No.120 of 2008) without moving anywhere. Dictates of common sense would say

that the abduction and confinement of Manimaran (P.W.1 in S.C. No.120 of 2008) on 05.03.2006 cannot be a fact that is incompatible with the abduction of the 4 Kannadigas on 07.03.2006 and confinement of them along with Manimaran (P.W.1 in S.C. No.120 of 2008) in the same hut.

v The police have not examined the Motor Vehicles Inspector to prove the damage caused to the Maruti Alto car (M.O.8) of the victims on account of its being dashed by the Toyota Qualis car (M.O.9) of the accused.

This Court's finding:

Pertinent it is to point out that the police were not investigating a vehicular accident case for them to send the two cars for examination by the Motor Vehicles Inspector. The two cars, viz., the Maruti Alto car (M.O.8) and the Toyota Qualis car (M.O.9) were produced before the Court and they were there for everyone to see.

vi Ganesh (P.W.1) and Naveen Kumar (P.W.2) identified Sakthi @ Sakthivel (A.7) in the Court and therefore, his case stands in pari materia with the acquitted accused.

This Court's finding:

It is true that Ganesh (P.W.1) had not identified Sakthi @ Sakthivel (A.7) in the Court, but, there has been recovery of elephant-hair ring (M.O.5), chain (M.O.6) and Samsung cell phone (M.O.1) belonging to Ganesh (P.W.1) and his friends. The loss of these items has been mentioned in the complaint (Ex.P.1) itself given by Ganesh (P.W.1) and after recovery from Sakthi @ Sakthivel (A.7), they were identified by Ganesh (P.W.1) and Naveen Kumar (P.W.2) in the Court. In the absence of any explanation by Sakthi @ Sakthivel (A.7) either in his Section 313 Cr.P.C. examination or by way of suggestion as to how he got into possession of these items, it will be legitimate for this Court to fall back upon illustration (a) to Section 114 of the Evidence Act. Further, in the opinion of this Court, the other accused have been wrongly acquitted by the trial Court, which, the State has not chosen to appeal against. In this context, it is worth alluding to the sagely observation of the Supreme Court in Gangadhar Behera and others vs. State of Orissa⁴, wherein, it was held that merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same, does not lead, as a natural corollary that, those who have been convicted must also be acquitted.

vii There is no iota of evidence against Madanur Ravi (A.9) to implicate him in the offence.

This Court's finding:

There appears to be sufficient force in this submission because Madanur Ravi (A.9) was the kingpin only in the abduction of Manimaran (P.W.1 in S.C. No.120 of 2008) and he has not played any role in the abduction of the four Kannadigas in this case. Moreover, he has not been identified either by Ganesh (P.W.1) or Naveen Kumar (P.W.2). Ergo, Madanur Ravi (A.9) deserves acquittal in this case.

viii The witnesses have stated that they had seen the accused in the police station and therefore, the dock identification of the accused would stand vitiated.

This Court's finding:

Be it noted that there is no legal bar for the witness to see the accused in the police station during investigation. Earlier, in the Madras Presidency, during the British days, test identification parades were conducted by the police in the police stations in the light of the law laid down by a Division Bench of this Court in Gurusami Tevan and Others v. Emperor⁵. But, in 1955, the Supreme Court, in Ramkishan Mithanlal Sharma vs. State of Bombay⁶, held that the statement of the witness in his evidence that he identified the accused in the police station was hit by Section 162 Cr.P.C. and therefore, that statement cannot be used as a corroborative piece of evidence for dock identification. In a case where the victim did not have acquaintance with the accused, admits that he saw the accused in the police station before the conduct of test identification parade, then, the test identification parade becomes sham and as a sequel, the dock identification becomes suspect. However, in the instant case, the witnesses were in the company of the accused from 07.03.2006 until their escape on 12.03.2006. So, test identification parade was not at all required in this case. Hence, the witnesses seeing some of the accused in the police station when they went to identify their belongings, can, by no stretch of imagination, vitiate the dock identification of the accused by the witnesses.

13 In view of the foregoing discussion:

- the conviction and sentence imposed by the trial Court on Madanur Ravi (A.9) are set aside and as a sequitur, CrI.R.C. No.1384 of 2012 is allowed.
- the conviction and sentence imposed by the trial Court on Vetri @ Vetrivel (A.1), Sakthi @ Sakthivel (A.7), Seenu @ Srinivasan (A.8), Vasanth Kumar (A.10) and Kutty (A.12) are confirmed and as a sequel, CrI.R.C. No.1397 of 2012 preferred by Sakthi @ Sakthivel (A.7),

5 1936 MWN CrI. 25

<https://hcservices.ecourts.gov.in/hcservices/>

6 AIR 1955 SC 104

Crl.R.C. No.189 of 2013 preferred by Seenu @ Srinivasan (A.8), Crl.R.C. No.190 of 2013 preferred by Vasanth Kumar (A.10) and Kutty (A.12) and Crl.R.C. No.561 of 2013 preferred by Vetri @ Vetrivel (A.1) are dismissed.

14 To sum up:

- Crl.R.C. No.1384 of 2012 is allowed; and
- Crl.R.C. No.1397 of 2012, Crl.R.C. No.189 of 2013, Crl.R.C.No.190 of 2013 and Crl.R.C. No.561 of 2013 are dismissed.

The trial Court is directed to secure Vetri @ Vetrivel (A.1), Sakthi @ Sakthivel (A.7), Seenu @ Srinivasan (A.8), Vasanth Kumar (A.10) and Kutty (A.12) and commit them to prison to serve out the remaining period of sentence.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Cad

To

- 1.The Additional Sessions Judge,
Krishnagiri.
- 2.The Principal Assistant Sessions Judge,
Krishnagiri.
- 3.The Chief Judicial Magistrate,
Krishnagiri.
- 4.The Judicial Magistrate No.2,
Krishnagiri.
- 5.The Director General of Police,
Mylapore,
Chennai.
- 6.The Public Prosecutor,
Madras High Court,
Chennai

7 The Deputy Registrar (Crl. Side)

Madras High Court
Chennai

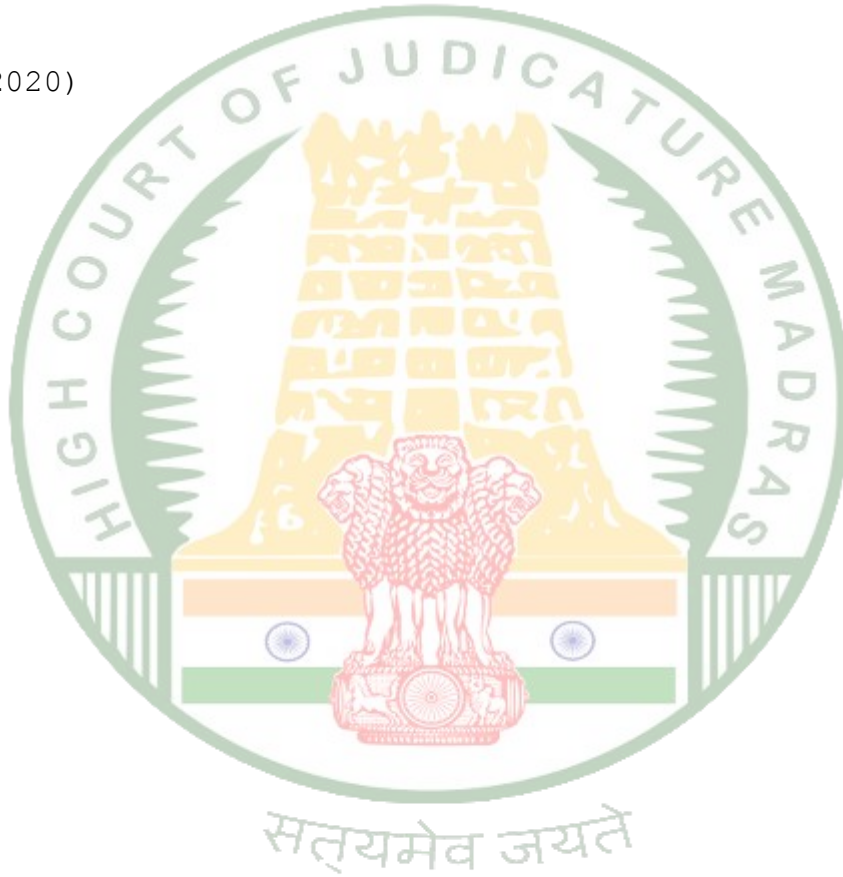
with a direction to transmit the
original records to the Court(s)
concerned

8.The Sub Inspector of Police,
Veppanapalli Police Station,
Krishnagiri District.

+4cc to Mr.S.Xavier Felix, Advocate, S.R.No. 2102 & 2104
+1cc to Mr.G.Gandhi Kumar, Advocate, S.R.No. 2403
+1cc to Mr.S.Vijay, Advocate, S.R.No. 2543

Crl.R.C. Nos.1384 & 1397 of 2012
and
189, 190 & 561 of 2013

RJI (CO)
GN(18/02/2020)



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