



Crl.A.Nos.814 of 2017, 306 of 2018, 328 of 2020 & 383 of 2021
Crl.M.P.Nos.2236 of 2018 & 8073 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2022

Pronounced on : 12.08.2022

Coram::

THE HONOURABLE Dr. JUSTICE G. JAYACHANDRAN

Crl.A.Nos.814 of 2017, 306 of 2018, 328 of 2020 & 383 of 2021
& Crl.M.P.Nos.2236 of 2018 & 8073 of 2021

Crl.A.No.814 of 2017

R.Viji @ Vijayaraj,
S/o.Rajarathinam,
No.24/13, C.G.Colony, 4th Street,
Royapuram, Chennai.

... Appellant/Accused No.3

/versus/

State Represented by
Inspector of Police,
B-2, Esplanade Police Station,
Chennai.

... Respondents/Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C., pleaded to allow the appeal and to set aside the judgment dated 19.12.2017 in S.C.No.369 of 2013, on the file of XVIII Additional Sessions Judge, Chennai convicting appellant under Section 120(B) of I.P.C and sentencing him to undergo imprisonment for 7 years Rigorous Imprisonment and to pay fine of Rs.5,000/- in default to undergo further period of 3 months Simple Imprisonment and also convicted for offence under Section 392 r/w 397 I.P.C and sentencing him to undergo 7 years R.I and to



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pay fine of Rs.5,000/- in default to undergo further period of 3 months S.I.

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For Appellant : Mr.C.Raghavan
For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

Crl.A.No.306 of 2018

Hemnath,
S/o.Asaithambi,
No.15/5, Thandiar Nagar, 1st Street,
Tondiarpet, Chennai – 600 081.

... Appellant/Accused No.2

/versus/

State Represented by
Inspector of Police,
B-2, Esplanade Police Station,
Chennai.

... Respondents/Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to set aside the judgment dated 19.12.2017 in S.C.No.369 of 2013, on the file of XVIII Additional Sessions Judge, Chennai convicting appellant under Section 120(B) of I.P.C and sentencing him to undergo imprisonment for 7 years Rigorous Imprisonment and to pay fine of Rs.5,000/- in default to undergo further period of 3 months Simple Imprisonment and also convicted for offence under Section 392 r/w 397 I.P.C and sentencing him to undergo 7 years R.I and to pay fine of Rs.5,000/- in default to undergo further period of 3 months S.I.

For Appellant : Mr.Dr.G.Krishnamurthy



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For Respondent

: Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

Crl.A.No.328 of 2020

Santha Kumar,
S/o.Munusamy,
No.15, Adi Dravidar Street,
Vinayagapuram,
Chennai – 600 081.

... Appellant/Accused No.1

/versus/

State Represented by
Inspector of Police,
B-2, Esplanade Police Station,
Chennai.

... Respondents/Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C., pleaded to allow and to set aside the judgment dated 19.12.2017 in S.C.No.369 of 2013, on the file of XVIII Additional Sessions Judge, Chennai convicting appellant under Section 120(B) of I.P.C and sentencing him to undergo imprisonment for 7 years Rigorous Imprisonment and to pay fine of Rs.5,000/- in default to undergo further period of 3 months Simple Imprisonment and also convicted for offence under Section 392 r/w 397 I.P.C and sentencing him to undergo 7 years R.I and to pay fine of Rs.5,000/- in default to undergo further period of 3 months S.I. .

For Appellant

: Mr.Dr.G.Krishnamurthy



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For Respondent

: Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

Crl.A.No.383 of 2021

Thiruneer @ Thirunavukarasu,
S/o.Muthu,
No.4A, Vinayagapuram,
Tondaiyarpettai,
Chennai – 600 081

... Appellant/Accused No.4

/versus/

The State Represented by
Inspector of Police,
B-2, Esplanade Police Station,
Chennai.

... Respondents/Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C., pleaded to allow and to set aside the judgment in S.C.No.369 of 2013 dated 19.12.2017 convicted and sentence the appellant/A4 to undergo rigorous imprisonment for 7 years and imposed to pay fine of Rs.5,000/- in default simple Imprisonment of 3 months for the offence under Section 120(B) and 392 r/w 397 r/w 109 r/w 34 of I.P.C and the appellant/accused A4 to undergo rigorous imprisonment for 7 years and imposed to pay fine of Rs.5000/- in default S.I for three months for the offence under Section 392 r/w 397 I.P.C r/w 109 r/w 34 of I.P.C.

For Appellant : Mr.Dr.G.Krishnamurthy

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

COMMON JUDGMENT



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These batch of four Criminal Appeals are by the four accused persons, who were convicted in S.C.No.369/2013, on the file of XVIII Additional Sessions Judge, Chennai, for the offence of conspiracy and in furtherance of conspiracy, committed robbery of Rs.2,08,000/- from one Kumar—the defacto complainant at knife point, on 13/04/2013, at about 6.30 p.m near Chennai Anderson Street – Annapillai Street junction.

2. All the accused were sentenced for the respective offences as under:-

Accused	Sentence and Conviction passed by the Trial Court
A-1 to A-4	For the offence under Section 120 (B) I.P.C, to undergo 7 years R.I and to pay fine of Rs.5,000/- in default, 3 months S.I
A-1 to A-3	For the offence under Section 392 r/w 397 I.P.C to undergo 7 years R.I and to pay fine of Rs.5,000/- in default, 3 months S.I.
A-4	For the offence under Section 392 r/w 397 I.P.C r/w 109 r/w 34 I.P.C to undergo 7 years R.I and to pay fine of Rs.5,000/- in default, 3 months S.I.

The period of substantive sentence ordered to run concurrently.

3. The case of the prosecution which was found to be proved by the Trial Court runs as below:-



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The 4th accused Thiruneer @ Thirunavukarasu, who is the appellant in C.A.No.383/2021, while working in M/s.Olympia Cards, Anderson Street, Chennai, conspired with the other accused to rob the cash bag containing the weekly wages of staff when being taken for disbursement. He provided the information about the cash movement and identified the persons who will be carrying the cash. In pursuance to the conspiracy, three weeks prior to the occurrence, they conducted recce and on 13/04/2013, when one of the staff of M/s.Olympia Cards Mr.Kumar (P.W-1) was near Anderson Street – Annapillai Street Junction, A-1 to A-3 restrained him. A-2 and A-3 placed knife on the throat and stomach of P.W-1 on the instruction of A-1. Then, A-1 snatched the cash bag and called A-2 and A-3 to fled. While fleeing, A-1 and A-3 were chased by P.W.1 and caught them with the help of the police and public who were nearby. Before they could be caught, the accused persons took cool drinks bottles from the nearby shop and thrown at their chasers and intimidated them.

4. The A-1 to A-3, who were caught by accused persons were brought to Esplanade Police Station by the the Traffic Head Constable Mr.J.Krishnan



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(P.W.3) attached to Kothavalchavadi Police Station and handed over to the Sub-Inspector of Police, Mr.Udayasurian (P.W-4) of the Esplanade Police. On the complaint given by Kumar (PW-1), case was registered in Crime No:1111/2013 under Sections 341, 336, 427, 392 r/w 397 and 506(ii) of I.P.C. During the investigation, on the confession of these accused, the role of A-4, who was the staff of M/s.Olympia Cards and gave the inside information about the movement of money and the person who will carry the cash was arrested. Charges were altered and final report filed.

5. On receipt of the final report, copies were served to the accused persons and charges for the offences stated below were framed against them for trial.

Charges	Accused	Section
Charge 1	A-1 to A-3.	Section 392 r/w 397 of I.P.C
Charge 2	A-2 and A-3.	Section 336 I.P.C
Charge 3	A-1 to A-3.	Section 427 I.P.C
Charge 4	A-1 to A-4.	Section 120(B) I.P.C
Charge 5	A-4.	Section 109 r/w 34 I.P.C

6. Before the Trial Court, to prove these charges, the prosecution examined 9 witnesses, 18 documents were marked as exhibits. The two knives and



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bottle pieces were marked as Material Objects 1 to 3 respectively.

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7. The finding of the Court holding the accused guilty and the sentence imposed on them is challenged by the accused in these appeals on the ground that the Trial Court failed to consider the delay in registering the F.I.R. According to the prosecution, the alleged occurrence took place on 13/04/2013 at 6.30 p.m. Admittedly, the distance between the scene of occurrence and the Police Station is only 1 km. It is the case of the prosecution that, the accused along with the cash bag were caught red handed and brought to the Police Station. While so, the complaint is registered only at 19.55 hrs. The delay in registering the F.I.R is not explained. The correction in the time of registering F.I.R from 19.45 hrs to 19.55 hrs also not explained.

8. In Form-95, the recovery of a small sandal colour net bag is inserted in between item No.1 and 3. The said net bag not produced. Among the two Form-95 i.e., Ex.P-2 and Ex P-3, in Ex.P-2 witnesses have signed whereas, in Ex.P-3, there is no signature of the witnesses in the column meant for witnesses. The Trial Court erred in holding that, no law says that Form-95 should contain the



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signatures of the witnesses. The said observation is contrary to the document, wherein there is a specific column at the bottom of Form-95 for the signatures of witnesses and when the prosecution thought fit to get the signatures of the witnesses in one Form-95 (Ex.P-2) and omitted to get the signature in another Form-95 (Ex P-3). The Trial Court erred in ignoring the contradiction in the evidence of P.W-1 who had deposed that, in the bag he carried, there were 100 rupees currencies. Whereas, as per the evidence of Investigating Officer and the photographs of the currencies, among the money recovered from the accused, there is no hundred Rupees currency.

9. P.W-1 (Kumar), who is the most competent person to speak about the incident occurred on 13/04/2013, had contradicted his own version regarding the specific overt act of A-2 and A-3. He has not properly identified who kept the knife on his throat and who kept the knife on his stomach. There is no injury or allegation of attempt to cause death or grievous hurt as per the testimony of PW-1. The other witnesses for prosecution namely, P.W-2, P.W-3 and P.W- 5 admittedly not seen the occurrence. They claim that, on hearing the scream of P.W-1, they chased the accused persons and caught them. Therefore, the ingredient for offence



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under Section 397 of I.P.C is not made out even if the unnatural, uncorroborated evidence of P.W-1 is taken on face value. Further, the accused persons were not identified before the Court by P.W-5, hence he was treated as hostile witness by the prosecution. P.W-2 and P.W-3 are Police Personnel who present at the time of occurrence is highly doubtful.

10. Apart from the above grounds, the Learned Counsel for the 4th accused also submitted that, the only incriminating evidence against A-4 is the confession of the co-accused, which is inadmissible in evidence. In spite of the inadmissibility, the Trial Court has erred in convicting A-4 based on the inadmissible evidence of the co-accused.

11. The Learned Government Advocate (Crl.Side) representing the State while defending the judgment of the Trial Court submitted that, it is a case where A1 to A3 were got red handed by Traffic Police, who chased them along with the defacto complainant and general public. They were taken to Police Station and on registration of the complaint, F.I.R and their confession statement recorded. From their confession statement, the involvement of 4th accused in the crime and he



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has an insider passed on the information about the movement of money and the person who carries the money to the other accused. This fact which is exclusively within the knowledge of the co-conspirator has been disclosed during the interrogation in their voluntary confession. Thus, A4 has been arrayed as accused for conspiracy and abetment.

12. Section 10 of Indian Evidence Act, speaks *“the things said or done by conspirator in reference to common design”* and under Section 30 of Indian Evidence Act, *“the confession made by one of the accused against the co-accused tried jointly for the same offence”* is admissible in evidence. Therefore, the portion of the statement from the co-accused incriminating A4 regarding the information passed on them about the cash movement is admissible under Section 27 of the Evidence Act read with Sections 10 & 30 of the Indian Evidence Act.

Section 10 of Indian Evidence Act, which reads as below:-

“10. Things said or done by conspirator in reference to common design.—



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Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

Section 30 of Indian Evidence Act, which reads as below:-

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

[Explanation.—“Offence” as used in this section, includes the abetment of, or attempt to commit, the offence.]



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14. Relying upon the above sections in Evidence Act, the Learned Government Advocate for the respondent stated that the co-accused statement in case of conspiracy is admissible. P.W.1 had swapped the overt act of A2 & A3 but the fact remains that both had shown knife and at knife point the cash bag was snatched by A1. While all the three were on the heels, general public assisted the Traffic Police P.W.3 and P.W.4 to apprehend them. The swapping of overt act not fatal to prosecution, since the witness was cross examined not some after chief examination.

15. P.W.2 (Ranganathan), Sub Inspector, independent witness had spoken about hot pursuit to apprehend A1 to A3. He is also signatory to Form-95 marked as Ex.P.3. In Form-95 regarding the sandal colour net bag in which, cash of Rs.2,08,000/- was kept and two knives which are marked as M.O.1 and M.O.2. The signature of witness is found. Whereas, in the other form-95, marked as Ex.P.2, which is in respect of broken Glass pieces recovered at SOC on that day on 13.04.2013 night, there is no signature of the witness. The Trial Court also disbelieved the case of the prosecution regarding damage worth Rs.300/- by



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throwing the cool drinks bottle taken from Unni Cool Bar. The charge under Section 336 of I.P.C for the act of Endangering the life has been rejected by the Trial Court in view of the fact that, P.W.5 had turned hostile and not supported the case of the prosecution about this incident. Therefore, Form-95 regarding the collection of cool drink glass pieces, which does not contain the signature of the witness, will no way affect the case of the prosecution and the decision of the trial Court which has convicted them for offence under Section 392 r/w 397 and 120-B of I.P.C is to be upheld.

16. Heard the Learned Counsel for the appellant and the submission made Learned Government Advocate (Crl.Side) for the respondent/State. Records perused.

17. The incident has taken place on 13.04.2013 at about 16.30 hrs in the public road which is very busy road and it was on the eve of Tamil New Year as said by P.W.2 independent witness. A1 to A3 had been caught red handed by two Police Personnel and the general public which has been proved through P.W.2, P.W.3 and P.W.4. All the three accused along with money and knives were



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taken to Police Station by P.W.1 to P.W.4. P.W.5 has recorded the statement of P.W.1 and had registered the complaint in Crime No.1111 of 2013 and taken up the investigation. Just because the place of occurrence and the Police Station is only 1 Kilometer, the case of the prosecution cannot be doubted for registering the F.I.R, one hour after the occurrence. The discrepancy in the evidence of P.W.1 regarding the overt act of A2 & A3 is of not much significance since for the occurrence which took place on 13.04.2013, P.W.1 was examined in chief on 03.09.2015 and he was cross examined two years thereafter as on 23.08.2017. So, after lapse of four years, the swapping of overt act of A2 & A3 by the witness is immaterial in view of the fact that, they both carried knife and put P.W.1 under threat of life, to facilitate A1 to snatch the bag containing money. These three accused were informed by A4 that P.W.1 will be carrying money in the bag and the recce conducted by these accused identifying P.W.1 as the person who will be carrying cash by A4 are facts which are exclusively within the knowledge of A1 to A4 and the said fact has been discovered in consequence to the information disclosed by the accused persons. That portion of the confession statement become relevant under Section 27 of Indian Evidence Act, which reads as below:-



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***Section 27. How much of information received
from accused may be proved.—***

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

18. A4 was charged for offence under Section 109 r/w 34 of I.P.C besides for offence under Section 120-B of I.P.C. The crime of robbery at knife point committed by A1 to A3. For the said commission of crime, the input given by A4 and the commission of conspiracy before the crime has been unravelled through the statement of the accused persons who faced joint trial for the said offence.

19. In this connection, the evidence of P.W.6 (Sekar) and P.W.7 (Maruthapandi) both Managers of M/s.Olympia Cards is relevant. P.W.6 (Sekar)



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is one of the witness to the confession statement of A4. P.W.7 (Maruthapandi), in the cross examination, had stated that, on the date of occurrence, A4 came to the shop and signed in the attendance and to prove it, the attendance register is marked as Ex.P.13, in which the name of 4th accused is found in serial No.19. In the cross examination, P.W.7 has stated that at 6.10 p.m, A4 left the shop and he was not in the shop at the time of occurrence. The absence of A4 in the shop at the time of occurrence not stated by P.W.7 in his previous statement or even in the chief examination. This fact has been elicited by accused during the cross examination and therefore, this statement cannot be considered as an afterthought to fill the gap in prosecution case.

20. The case of the prosecution is not that A4 was also present along with A1 to A3 when the cash bag was snatched from P.W.1. The 4th accused identified the person who carrying the cash much earlier. The absence of A4 in the shop at the time of occurrence only indicates his conduct as a co-conspirator, who was expecting the crime to be committed by the other conspirators on his aid.

21. The discrepancy in description of knives and the overt act of A2 & A3 regarding the place in the portion of the body kept knife is to be doubted for the



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sake of extending the benefit to the accused. At the most, these appellants can be found not guilty for the offence under Section 397 I.P.C alone. For offence under Section 392 I.P.C, there is no discrepancy or inconsistency in the case of the prosecution. Therefore, even any leniency can be shown in favour of the appellants based on the minor contradictions in the evidence of prosecution, it will enure them, the benefit of acquittal under Section 397 of I.P.C. This Court intends to extend the said benefit and modified the conviction and sentence against these appellants.

Accused	Sentence and Conviction passed by the Trial Court	Sentence and Conviction passed by the Trial Court is modified as below
A-1 to A-4	For the offence under Section 120 (B) I.P.C, to undergo 7 years R.I and to pay fine of Rs.5,000/- in default, 3 months S.I	For the offence under Section 120 (B) I.P.C, to undergo 3 years R.I and to pay fine of Rs.5,000/- in default, 3 months S.I
A-1 to A-3	For the offence under Section 392 I.P.C to undergo 7 years R.I and to pay fine of Rs.5,000/- in default, 3 months S.I.	For the offence under Section 392 I.P.C to undergo 3 years R.I and to pay fine of Rs.5,000/- in default, 3 months S.I.
A-4	For the offence under Section 392 I.P.C r/w 109 r/w 34 I.P.C to undergo 7 years R.I and to pay fine of Rs.5,000/- in default, 3 months S.I.	For the offence under Section 392 I.P.C r/w 109 r/w 34 I.P.C to undergo 3 years R.I and to pay fine of Rs.5,000/- in default, 3 months S.I.

22. Accordingly, these *Criminal Appeals are Partly Allowed*. The judgment of conviction and sentenced passed by the Additional Sessions Judge,



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City Civil Court, Chennai, in S.C.No.369 of 2013, dated 19.12.2017 are modified.

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Consequently, connected Miscellaneous Petitions are closed. The period of sentence already undergone by the appellants shall be set off. The bail bond executed by the appellants, shall stand cancelled. The respondent police are directed to secure the accused and remand them to the judicial custody to undergo the remaining period of sentence.

12.08.2022

Index :Yes.

Internet :Yes.

Speaking order/Non-speaking order
bsm

Copy to:-

1. The XVIII Additional Sessions Judge, City Civil Court, Chennai
2. The Inspector of Police, B-2, Esplanade Police Station, Chennai.
3. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

bsm

Delivery common judgment made in
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