



Crl.R.C.No.1233 of 2023 & Crl.M.P. No.9666 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2023

DELIVERED ON : 11.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.R.C.No.1233 of 2023 &
Crl.M.P. No.9666 of 2023

Siva @ Sivakumar
Petitioner

...

Vs.

State Represented by
The Inspector of Police,
Veppanapalli Police Station
Krishnagiri District
Crime No. 113 of 2006

... Respondent

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 against the judgment passed by the learned Additional Sessions Judge, Krishnagiri, in Criminal Appeal No.77 of 2010 dated 27.03.2012, confirming the conviction and sentence passed by the learned Principal Assistant Sessions Judge, Krishnagiri, vide judgment dated 14.12.2010 in S.C. No.121 of 2008.

For Petitioner : Mr.S. Xavier Felix

For Respondent : Mr.J. Subbiah
Government Advocate (Crl. side)



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ORDER

This Criminal Revision is filed against the judgment passed by the learned Additional Sessions Judge, Krishnagiri, in Criminal Appeal No.77 of 2010 dated 27.03.2012, confirming the conviction and sentence passed by the learned Principal Assistant Sessions Judge, Krishnagiri, vide judgment dated 14.12.2010 in S.C. No.121 of 2008.

2. The appellant is the 2nd accused in S.C.No.121/2008 and he is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
Section 395 IPC	Rigorous Imprisonment for 7 years and a fine of Rs.3,000/-, in default, to undergo 3 months Simple imprisonment.
Section 368 IPC	Rigorous Imprisonment for 3 years and a fine of Rs.1,000/-, in default, to undergo 3 months Simple imprisonment.
Section 347 IPC	Rigorous Imprisonment for 2 years and a fine of Rs.1,000/-, in default, to undergo 3 months Simple imprisonment.



The aforesaid sentences were ordered to run concurrently.

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3. The Prosecution case:

3.1. This incident is one of decoity, illegal confinement and torture. One Ganesh (P.W.1) along with his friends Naveen Kumar (P.W.2), Rajkumar and Pratheesh were returning from Kuppam in Andhra Pradesh to Bangalore (where they were residing) in a car (Maruthi Alto bearing No.K.A.09 N3956) after completing their work, on 07.03.2006.

3.2. In order to reach Bangalore faster they preferred Veppenapalli route since the road also was a good one. On the same day night at 9.45 p.m. after crossing Tamil Nadu border, a red Qualis car bearing Registration No.TN 27-R-2075 hit the car from behind and then overtook the car only to intercept the car in the front.

3.3. About 8 persons got down from the Qualis car and assaulted four of them in the Alto Car. Subsequently they were forced into the bigger vehicle, taken to a thatched roof dwelling, confined in a room for 5 days and tortured.



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3.4. The four of them were out of bounds and reach for 5 days and their personnel belongings like mobile phones, gold chains, gold ring and some cash were snatched from them.

3.5. On 12.03.2006, when another victim like them made good his escape, the assailants left them to go in search of the one who escaped, they (four of them) gave the slip and ran towards Kuppam. P.W.1 borrowed some money from his acquaintance in Kuppam and all of them took a train to Bangalore. Later taking the advice of an advocate, all the four victims reached Veppenapalli the next day and gave a police complaint (Ex.P1).

3.6. Based on their complaint, a FIR (Ex.P18) was registered under Sections 343, 395 IPC in Crime No.113/2006 by Selvarajan (P.W.7), the Sub Inspector of Police, Veppenapalli Police Station. This FIR was initially against 12 accused (A1 to A12).

3.7. Ganesh (P.W.1) and Naveen Kumar (P.W.2) were taken to the



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Government Hospital, Krishnagiri, where, they were examined by

Dr.Gopalakrishnan (P.W.8) at 4.00 p.m. on 13.03.2006.

3.8. 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.

3.9. 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;

3.10. Naveen Kumar (P.W.2) took treatment from Dr. Gopalakrishnan (P.W.8) of Krishnagiri Government Hospital for his injuries by the accused during his captivity. Similarly Ganesh (P.W.1) also took treatment in the same hospital from the same doctor.



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3.11. P.W.1 and P.W.2 were later summoned to the police station and asked to identify the accused 1,2,3,6,10 & 11 and also the seized articles (which were robbed from the complainants).

3.12. In another incident on 03.04.2006 one Kaveri a resident of Pothavarem Village in Kaveripattinam, was hit by the same Qualis vehicle bearing Registration No.TN 27-R-2075 in a petrol bunk in Kaveripattinam when he was filling petrol for his Splendor Motorcycle. He suffered fracture on his shoulder and his motor cycle was also damaged. The Qualis was driven by one Rajendran who had given a xerox copy of the RC book and requested Kaveri not to go to the police. After taking treatment in Kaveripakkam Government Hospital, he lodged a police complaint with Kaveripattinam Police Station. Based on the complaint an FIR was registered under Section 279 and 337 IPC in Crime No.149/2006 by John Joseph (P.W.6), Head Constable of Kaveripattinam Police Station.

3.13. Pandurangan (P.W.9) Circle Inspector of Guruparapalli Police



Station was the Investigating Officer I who took up investigation in Crime

Number 110/06 registered by by Selvarajan (P.W.7), went to the place of crime, enquired Kalyanaraman, Village Administrative Officer, Veppenapalli (not examined), Muniraman, Village Assistant (not examined) who witnessed the observation mahazar (Ex.P21) and rough sketch (Ex.P22) prepared by him. He also enquired the complainant P.W.1 and P.W.2 and recorded their statements on 13.03.2006.

3.14. Later on 14.03.2006 at about 7.15 p.m, Vetri @ Vetrivel (A-1) was apprehended near Krishnagiri Londonpettai BSNL Office near the auto stand. His confession was recorded in the presence of Subramani (P.W.3), Village Administrative Officer, Sigaramaranapalli. He (A1) confessed (Ex.P2) about the involvement of Shanmugam (A6), Ravi(A4), Siva (A2), Suresh (A5) and Rajkumar (A3) in the crime. The robbed articles (M.O.1 to M.O.8) were also recovered from them. It also included cash. The Qualis Car (M.O.9) bearing Registration No.TN-27-R-2075 also was seized and the confession statement (Ex.P3 to Ex.P6) of all the other accused were recorded. The seizure were under different mahazars Ex.P7 to Ex.P13 and



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Ex.P16 & Ex.P17. The following is the tabular column showing the particulars of the names of the accused date of their arrest and the articles seized from them.

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-
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 Recovery	Identified Scene of Occurrence	Kalyanaraman and Thimappan
Madanur Ravi (A9)	Absconding C/s	N/A	N/A	N/A
Vasanthakumar (A10)	11.07.06	N/A	N/A	N/A
Vadivel (A11)	Absconding C/s	N/A	N/A	N/A
Kutty (A12)	Absconding 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

3.15. Rajkumar (PW-10). The Inspector of Police, Krishnagiri Taluk Police Station after completing the investigation, filed the final report under Sections 392, 394 (2 counts), 343, 347, 365, 395 r/w.168 IPC against the



accused.

WEB COPY 3.16. 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.

3.17. 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.

3.18. 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.

3.19. After examining witnesses and obtaining various reports, the



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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.

3.20. 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, Krishnagiri, for trial.

3.21. The prosecution had examined PW-1 to PW-10 and adduced Ex.P1 to Ex.P23. They also produced MO1 to MO9, the recovered property. Ganesh (PW-1) and Naveen Kumar (PW-2) are the complainants. They



corroborated with each other while narrating the sequence of events.

Subramani (PW-3) and Anbazhagan (PW-4) are Village Administrative Officers and witnesses to the observation mahazar and confession statements of the accused and also the recovery of the mobile phones, gold chains, finger ring and cash from the accused which were snatched from the complainants and their friends.

3.22. Kauvery (PW-5) narrated about the Qualis Car hitting him and his two wheeler on 04.03.2006 in a petrol bunk and John Joseph (PW-6) about the receipt of complaint from PW-5 and registering FIR. Dr.Gopalakrishnan (PW-8) was the Doctor who treated both PW-1 & PW-2 the complainants for their injuries and issued wound certificate for the same (Ex.P19 & Ex.P20). Selvarajan (PW-7) was the Sub Inspector of Police who received the complaints from PW-1 & PW-2 and registered the FIR (Ex.P18) against the accused. Pandurangan (PW-9) was the Investigating Officer who investigated into the incident, made independent enquiries, recorded statements, arrested the accused and recorded their confession statements and recovered the robbed articles. Rajkumar (PW-10) who



succeeded Pandurangan (PW-9) laid the charge sheet after completing the investigation.

3.23. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same.

3.24. The accused examined 4 witnesses and also marked Ex.D1 to Ex.D6.

3.25. Vidyasagar (D.W.1), Ammasi (D.W.2), Rajkumari (D.W.3) and Palaniammal (D.W.4) had 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 EX.D.5.

3.26. 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



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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:

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

The aforesaid sentences were ordered to run concurrently.



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4. Aggrieved over the conviction and sentence the accused A1, A2, A7 to A12 filed appeals in the Court of Principal Additional Sessions Judge, Krishnagiri in Crl.A.Nos.4/2011, 75/2010 & 77/2010. Learned Principal Additional Sessions Judge, Krishnagiri, found the judgment of the trial Court in order and dismissed the appeals vide common judgment dated 27.03.2022.

5. Aggrieved by the concurrent findings of fact arrived at by the two Courts below, the instant criminal revision has been preferred by Siva @ Sivakumar (A.2).

6. Heard, Mr.S. Xavier Felix, learned counsel for the revision petitioner and Mr.J. Subbiah, learned Government Advocate (Crl. side) for the respondent.

7. Mr. S. Xavier Felix, learned counsel for the revision petitioner / A2 would contend that there were sufficient grounds to acquit the accused on



the following grounds:

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i. Inordinate delay in filing the police complaint by PW-1 & PW-2.

Even assuming that they were kept in illegal confinement for five days, it is perplexing as to how and why their wife and kin did not complain to the police or atleast search for them.

ii. A2 was implicated by A1 in his confession. No confession of the accused can be relied upon to implicate another person.

iii. FIR was prepared in tamil while the PW-1 did not know tamil. Even assuming that it was translated, there is no evidence as to who translated it.

iv. No ID parade was conducted to identify the accused as mandated in Cr.P.C.

v. Witnesses for the seizure mahazars were not local inhabitants.

vi. The deposition of DW-1 to DW-4 and the Ex.D1 to Ex.D5 were not considered by the trial Court as well as by the appellate court.

vii. Discriminating amongst the 12 accused by acquitting A3 to A6 defies logic as they were also allegedly charged for the same offence.



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8. Per contra, learned Government Advocate (Crl. Side) would contend that neither the trial Court nor the appellate Court erred in their judgments. According to him, the deposition of PW-1 & PW-2 along with the steps initiated by Investigating Officer PW-9 and PW-10, resulted in the zeroing in on the suspects and arresting them. He also added that the trial Court had placed on record its appreciation on the PW-3 and PW-9 withstanding the cross examination and remaining firm on what they knew. He also contended that the appeals had no merit in it.

9. Firstly, let me go into each of the contention of the learned counsel for the appellant

- i. The delay in filing the police complaint was justified. It has to be taken into consideration that though PW-1 & PW-2 along with two other friends were kidnapped, it happened in a place bordering Karnataka - Tamilnadu. The first instinct was to make good their escape rather than go in search of a police station. I do not feel that there was any delay in giving the police complaint.



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- ii. A1 was the one who was apprehended first. It was a case of decoity and his confession was relied upon by the investigating officer to know his accomplices. I do not find anything amiss in the procedure to identify the whole gang. It was a 12 member gang which waylaid PW-1 and his three friends, took them to an isolated place, kept them illegally confined in a hut, beat them up and took away all the valuables including gold chains, mobile phones and cash.
- iii. The FIR was registered on the complaint in tamil. PW-1 is a Kannadiga. The contents of his complaint in Tamil and his deposition as PW-1 had no contradictions. In the Court the deposition of P.W.1 in Kannada was translated into Tamil with the help of a transalator by name R.Srinivasan.
- iv. The victims were with the accused for five days in a hut. It was not a case of decoity on the road and ID parade conducted to identify the accused. It was a five days stay and the victims PW-1 & PW-2 knew the assailants very well by face even though they were strangers. In the Criminal Revisions filed by the other accused this Court had made the following observations:



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"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."

*"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 Bombay***⁶, 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."

I am entirely in agreement with the above observations made by a single judge of this court in the Criminal Crl.RC. Nos. 1384 & 1397 of 2012 and 189, 190 & 561 of 2013 filed by the co-accused.

v. The witnesses of the seizure mahazar as well as the confessions were

⁵ 1936 MWN Crl. 25

⁶ AIR 1955 SC 104



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responsible government officials and no deficiency can be pointed out on this aspect.

vi. 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.

vii. The depositions of DW-1 to DW-4 were considered by the courts below. In fact the trial court has rightly held that since the telegrams have been sent subsequent to the arrest of the accused i.e. on 15.03.2006, the evidence of D.W.1 to D.W.4 and Ex.D1 to Ex.D5 cannot be accepted. The judgment of the trial court was upheld by the appellate court.

viii. The Supreme Court in **Gangadhar Behera and others vs. State of Orissa reported in (2002) 8 SCC 381** 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



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also be acquitted. In my opinion, the other accused have been wrongly acquitted by the trial Court, which, the State has not chosen to appeal against. The very same view was expressed by the learned Single Judge in Crl R.C. No.1384 of 2012.

10. In the result,

- i. the Criminal Revision is dismissed. Consequently connected Criminal Miscellaneous petition is closed.
- ii. The judgment passed by the learned Additional Sessions Judge, Krishnagiri, in Criminal Appeal No.77 of 2010 dated 27.03.2012, and the conviction and sentence passed by the learned Principal Assistant Sessions Judge, Krishnagiri, vide judgment dated 14.12.2010 in S.C. No.121 of 2008, are confirmed.

11.08.2023

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Index : yes/no

Speaking /Non speaking Order



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Pre-Delivery order in
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