



Crl. Appeal Nos. 662 of 2018 & 278 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	21.08.2023
Judgment Pronounced on	22.12.2023

Coram

The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Crl.A.Nos.662 of 2018 & 278 of 2019

Crl.A.No.662 of 2018

Karthikeyan M

.. Appellant/A2

Vs

State represented by
The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District,
(Crime No. 62 of 218)

.. Respondent/Complainant

Crl.A.No.278 of 2019

Jana @ Janagaraj

.. Appellant/A1

Vs

State represented by
The Inspector of Police,
Tiruppur South Police Station,
Tiruppur.

.. Respondent/Complainant

Criminal Appeals filed under Section 374(2) Cr.P.C to set aside the judgment dated 5.10.2018 made in S.C.No.47 of 2018 passed by the learned Principal District and Session Judge, Tiruppur, and allow this appeal.



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For Appellant in Crl.A.No.662 of 2018 .. Mr.C.S.Saravanan

For Appellant in Crl.A.No.278 of 2019 .. Mr.V.Perarasu

Legal Aid Counsel

For Respondent in both Crl.As .. Mrs.G.V.Kasthuri
Additional Public Prosecutor

COMMON JUDGMENT

The Appellants have preferred these Criminal Appeals as against the judgment dated 5.10.2018 made in S.C.No.47 of 2018 passed by the learned Principal District and Session Judge, Tiruppur.

2. The brief facts, which are necessary for disposal of these Criminal Appeals, are as follows:-

2.1. The De-facto Complainant in this case is the Prosecution Witness P.W-1 Manikandan. As per the case of the Prosecution, the De-facto Complainant/P.W-1 in this case Manikandan is working as a Chef in Kumar Bakery which is situated behind the Old Bus Stand, Tiruppur. On 20.01.2018 by around 11.00 a.m. the De-facto Complainant/P.W-1 in this case Manikandan was proceeding on Arisikadai Street in Tiruppur Town for purchase of provisions to Kumar Bakery, he was walking on Sharmiam



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Sahib Street holding his mobile phone Vivo Blue Colour in his hand, at that time, the second Accused in this case Karthikeyan riding two-wheeler (Bajaj Pulsar) bearing Registration No.TN-42-P-3733 and the first Accused Jana @ Janakaraj was riding pillion. They were coming from opposite direction and approached towards the De-facto Complainant/P.W-1. The De-facto Complainant Manikandan was walking on Sharmiam Sahib Street and proceeded towards provision shop for purchase of provisions for use of Kumar Bakery. While walking he was talking on his mobile phone. The two wheeler bearing Registration No.TN-42-P-3733 (Bajaj Pulsar) came rushing towards him and the rider as well as the pillion rider threatened him and snatched the mobile phone from his hand. Also, the pillion rider/A-1 Jana @ Janakaraj placed knife on his neck and threatened him stating that whatever money he has he should hand over to them. Rs.300/- which he had kept in the shirt pocket for purchase of provisions was snatched by him. He immediately made hue and cry for which the passers-by came to the rescue of the De-facto Complainant. At that time, A-1 and A-2 sped away on the crowded street. They threatened the passers-by wielding a knife. Therefore, the De-facto Complainant preferred a complaint under Ex.P-1 with the Tiruppur South Police Station. P.W-6 Sub Inspector of Police, Tiruppur South Police Station received the complaint from the De-facto



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Complainant and registered the FIR under Ex.P-7. He had sent the original complaint under Ex.P-1 and original FIR Ex.P-7 to the learned Judicial Magistrate No.II, Tiruppur and copies of the same to the higher officials. P.W-7 the Inspector of Police, Tiruppur South Police Station took up the investigation, proceeded to the scene of crime and prepared observation mahazar under Ex.P-4 in the presence of witnesses. P.W-4 and P.W-5 Mahalingam and Thirumurugan and he also prepared a rough sketch under Ex.P-8 and had arrested the Accused and recorded confession statement from the Accused under Ex.P-5 in the presence of witnesses P.W-3 and P.W-4 and filed final report of the investigation before the Court of the learned Judicial Magistrate No.II, Tiruppur. Since the offences were triable by Court of Sessions, the learned Judicial Magistrate No.II, Tiruppur had taken the final report on the file of the learned Judicial Magistrate No.II, Tiruppur, as Preliminary Registration Case and issued summons to the Accused. On appearance of the Accused, copies were furnished under Section 207 of Cr.P.C. and the case was committed to the learned Principal District Judge, Tiruppur.

2.2. On receipt of the case records from the Court of the learned

Judicial Magistrate No.II, Tiruppur in PRC No.7 of 2018, the learned



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Sessions Judge had taken on file the case as S.C.No.47 of 2018. After hearing the arguments of the learned Public Prosecutor and the learned Counsel for the Accused, the learned Principal District and Sessions Judge, Tiruppur, framed charges under Section 392 r/w. 397 of IPC against the Accused Nos.1 and 2 and also under Section 506(ii) as against Accused Nos.1 and 2.

2.3. Since the Accused Nos.1 and 2 denied the charges and claimed to be tried, the learned Principal District and Session Judge, ordered trial. During trial, the Prosecution had examined witnesses P.W-1 to P.W-7 and marked documents Ex.P-1 to P-10 and also material objects M.O-1 to M.O-4. On appreciation of evidence, the learned Principal District and Sessions Judge, convicted the Accused Nos.1 and 2 for the offences under Sections 392 r/w. Section 397 and 506(ii) of IPC. For the offences under Section 392 r/w. Section 397 IPC Accused Nos.1 and 2 were sentenced to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.2,000/- each, in default, to undergo six months Simple Imprisonment.

2.4. For the offence under Section 506(ii) of IPC the Accused Nos.1 and 2 were sentenced to undergo six months Rigorous Imprisonment and



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fine of Rs.500/-, in default, to undergo one month simple imprisonment.

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Aggrieved by the judgment of conviction and sentence of imprisonment passed in S.C.No.47 of 2020 dated 05.10.2018, the Accused No.2 had preferred Appeal No.662 of 2018. Aggrieved by the judgment of conviction and sentence of imprisonment passed in S.C.No.47 of 2020 dated 05.10.2018, the Accused No.1 had preferred Appeal No.278 of 2019.

3. The learned Counsel for the Appellant/A-2 has already submitted his arguments on 16.08.2023. Today (21.08.2023), the learned Counsel for the Appellant/A-1 had submitted his arguments.

4. The learned Counsel for the Appellant/A-1 invited the attention of this Court to the evidence of P.W-1 to P.W-4 and Ex.P-9 and Ex.P-10. It is the submission of the learned Counsel for the Appellant/A-1 that the case had been framed against the Accused, based on the instigation of one Manikandan P.W-1, he was an employee of Kumar Bakery which belongs to one Ravi, P.W-1 who is a friend of Murali. All the witnesses referred to Murali. The final report of the Investigating Officer also cited Murali as a witness but the Prosecution had not examined the said Murali. It is the submission of the learned Counsel for the Appellant that the non-



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examination of the said Murali is fatal to the case of the Prosecution. P.W-1 in his cross examination had stated that the Sub Inspector of Police had written down the complaint under Ex.P-1. P.W-6 was the Sub Inspector of Police. He, in his cross examination when confronted regarding the Ex.P-1, had replied that he had not written complaint and he does not know who had written the complaint under Ex.P-1. The recovery Mahazar recorded under Ex.P-9 and Ex.P-10 are also contrary to the deposition of the witnesses Mubharak Ali-P.W-3 who was examined by the Prosecution had turned hostile. The other witness viz., Mahalingam was examined to mark observation mahazar under Ex.P-2 and Rough Sketch under Ex.P-8. M.O-1 to M.O-4 were not produced. In his evidence, he had not identified any of the material objects viz., M.O-1-Knife, M.O.2-Vivo Cell Phone, M.O-3-Bajaj Pulsar and M.O.4-Rs.300/- marked during trial. Therefore, Ex.P-9 and Ex.P-10 are hit by the contradictions in the evidence of the Prosecution witness. The case of the Prosecution rests on the recovery of the weapon from the scene of occurrence immediately, after the occurrence. But, the same was not proved before the Court. There are material contradictions between the deposition of P.Ws.1, 2, 4 & 5. In the absence of coherent evidence to support the case of the Prosecution, the judgment of the learned

Principal District and Sessions Judge, Tiruppur, in S.C.No.47 of 2018 date

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05.10.2018 is to be treated as perverse.
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5. Further, the learned Counsel for the Appellant submitted that as per the complaint under Ex.P-1, on the alleged date and time of occurrence, P.W-1 is alleged to have been walking on the road and talking on his mobile phone. After that, to show the Prosecution is duly bound to produce the call records of the mobile phone, the details of the mobile phone also not furnished under Ex.P-9. Therefore, the judgment of conviction recorded by the learned Principal District and Sessions Judge, Tiruppur is to be set aside, the Accused who had been convicted by the learned Sessions Judge are to be set free.

6. The learned Additional Public Prosecutor appearing for the Respondent vehemently objected to the line of arguments of the learned Counsel for the Appellants stating that witnesses had spoken cogently regarding the occurrence. The occurrence took place near Bakery when P.W-1 was proceeding to purchase vegetables for the Bakery. On hearing the cry of help from P.W.1, the passers-by apprehended the Accused A-1 & A-2 immediately after the occurrence and handed over to the Police, the same had been spoken to by the witnesses examined by the Prosecution.



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Even though, P.W-3 remained hostile, the case of the Prosecution was proved through the evidence of P.Ws.1, 2, 4 to 7 and proved the Ex.P-1 to Ex.P-10 and M.O-1 to M.O-4. Even though, there are minor contradictions, that does not affect the case of the Prosecution. The learned Sessions Judge had, on proper appreciation of evidence, rejected the defence of the Accused and convicted the Accused. When the learned Sessions Judge, had on proper appreciation of evidence arrived at a conclusion. This Court, on the same set of evidence, cannot acquit the Accused from the charges. The trial Judge had the advantage of observing the demeanour of the witnesses. Therefore, the submission of the learned Additional Public Prosecutor that this appeal lacks merits and is to be dismissed requires acceptance. The judgment of conviction recorded by the learned Sessions Judge is to be confirmed.

Points for consideration:

Whether the judgment of conviction recorded by the learned Principal District and Sessions Judge, Tiruppur, in S.C.No.47 of 2018 dated 05.10.2018 is to be set aside as perverse?

7. Heard the learned Counsel appearing for the Appellant/Karthikeyan/A2 in Crl.A.No.662 of 2018 and Appellant/Jana @ Janagaraj/A1 in Crl.A.No.278 of 2019 who was nominated by the Legal Aid



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Committee and the Learned Additional Public Prosecutor appearing for the Respondent in both appeals, perused the deposition of P.W-1 to P.W-7 and Ex.P-1 to Ex.P-10 and the judgment of the learned Principal District and Sessions Judge, Tiruppur, in S.C.No.47 of 2018 dated 05.10.2018.

8. On perusal of deposition of P.W-1, it is found that P.W-1 is the Complainant. He had in his evidence stated that he was an employee of Kumar Bakery which belongs to one Ravi. On 20.11.2018 by around 11 a.m., on his instruction P.W-1-Manikandan had gone to purchase vegetables for the Bakery. While he was walking on the road, he received a call on his mobile phone and he was talking to the person on his mobile. At that time, two persons who came on a two wheeler, Bajaj Pulsar, black colour bearing Registration No.TN-42-P-3733. They stopped the vehicle near P.W-1, the persons riding on the two wheeler Karthikeyan/A2 seized the mobile phone from P.W-1. The persons sitting on the pillion of the two wheeler Jana @ Janagaraj/A-1 threatened P.W-1, he asked P.W-1 to take out money from his pocket for which P.W-1 stated he does not have any money. On such reply, the pillion rider Jana @ Janagaraj/A-1 took out the knife and threatened him. At that time, the two wheeler rider Karthikeyan/A-2 had forcibly took Rs.300/- from the shirt pocket of P.W-1.



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On this incident, P.W-1 cried for help. The passers-by came to the rescue of P.W-1. On seeing them, the Accused 1 & 2 left the place. At that time, the pillion rider Jana @ Janagaraj/A-1 brandished the knife and threatened the passers-by not to approach him, failing which, he would attack them with the knife. Mubharak Ali, Saravanan and Mahalingam, the acquaintance of P.W-1 who have available at the place of occurrence immediately rushed to his rescue. On seeing them, the Accused 1 & 2 attempted to run away from the place of occurrence. The passers-by chased them and caught hold of them. The two wheeler bearing Registration No.TN-42-P-3733, Vivo Cell phone, on which P.W-1 spoke to the caller who was also seized from A-1 & A-2. In the cross examination of P.W-1, he would state that he does know the contents of the complaint. The other witnesses in this case, have acquaintance to P.W-1. The occurrence took place at Sharmiam Sahib Street which is a busy road always crowded with people was admitted by P.W-1 in his cross examination. He had admitted in his cross examination that he had not identified the properties during trial. The complaint had been lodged with an ulterior motive to settle scores with the Accused was rejected by him. He had stated that he does not know who is the person and who had written the complaint under Ex.P-1.



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9. P.W-2 is Saravanan. As per his evidence, he had been an employee of Murali Wines located at Sharmiam Sahib Street. He had narrated the incident as narrated by P.W-1-Manikandan. Further, he had stated that on hearing the cries of P.W-1, he rushed out from his shop along with his friends – Mahalingam and Mubharak Ali. On seeing P.W-2 and other witnesses are approaching him, Jana @ Janagaraj/A-1 alleged to have threatened them by brandishing a knife. As per his evidence, he along with Murali and other passers-by caught hold of the two wheeler driven by Karthikeyan/A-2 and A-1 & A-2 ran away from the place of occurrence. They apprehended them and the two wheeler Bajaj Pulsar bearing Registration No.TN-42-P-3733 which was handed over to the Police. To the pointed question, whether the occurrence had been recorded in CCTV Cameras fitted on the street concerned? P.W-2 states that he was not aware whether CCTV Cameras are available. The suggestion that the case was cooked up with the help of the Sub Inspector of Police, P.W-6 who happens to be an acquaintance of Murali who is running a bar in the place of occurrence, therefore, it was cooked up case at the instance of Murali, was denied by him. P.W-3 Mubharak Ali had only stated that he had affixed the signature in the Observation Mahazar under Ex.P-2 and Seizure Mahazar under Ex.P-3, he was treated as hostile. P.W-4 is Mahalingam, he is an



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employee of Murali who is running a bar viz., Murali Wines. P.W-4 had stated that he remained as a witness along with Mubharak Ali to the Observation Mahazar under Ex.P-4 and the seizure Mahazar regarding seizure of the material objects viz., Knife, mobile phone, two wheeler and Rs.300/- from the Accused. In the cross examination, he had stated that he was not aware what had been written in the documents in which he had signed as a witness. The documents alleged to have been executed by the Police and in which P.W-4 had signed were put to P.W-4 in cross examination stating that those documents are in typed format. He agreed for the same, he had admitted in his cross examination that he had not clearly stated in his 161 statement from where the Police Officials recovered the material objects. P.W-5 is Thirumurugan. He is running a shop under the name Coffee Day. He also narrated the very same facts as sated by P.W-1. He had denied the suggestion of the defence that he had deposed evidence as per the instruction of Murali, supporting P.W-1 Manikandan, that was denied by him. P.W-6 is Sam Albert the Sub Inspector of Police who had registered the FIR under Ex.P-7 on the basis of the complaint given by P.W-1 Manikandan. In the cross examination, he had stated that he does know who had written the complaint under Ex.P-1. He had admitted that under the mahazar only the two wheeler was produced before the Court and also



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admitted that he had not stated from whom the mobile phone, currency and knife, alleged to have been used by A-2, was not stated in the mahazar.

P.W-7 is the Investigation Officer Thennarasu, he had deposed regarding immediately after receiving the copy of the FIR, he had proceeded to the place of occurrence and prepared Rough Sketch and Observation Mahazar.

In the presence of witness Mahalingam and Mubharak Ali, the Accused had given confession. Based on the confession, the two wheeler, the mobile phone and Rs.300/- were recovered under Ex.P-9 and Ex.P-10. In his cross examination, he had denied the suggestion that the Sub-Inspector of Police had written down the complaint. He had denied the suggestion that the witnesses are known to each other. He was unable to state clearly whether CCTV cameras are available on the street. He had denied the suggestion that the material objects were not recovered from the Accused. From which place the money was seized and from whom it was seized had not been stated by the mahazar witnesses. He had admitted in his cross examination that the mobile phone call records were not obtained by him. He had denied the suggestion that for the minor incident that took place on the previous night, P.W-1 had settled scores by preferring the complaint with P.W-6 at the instance of Murali was denied by him in his cross examination. On a perusal of the Ex.P.1-complaint it is found that P.W-1-Manikandan had



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preferred the complaint in which he had narrated the entire facts as was deposited by him before the Court. From the cross examination of P.W.1 to P.W-5, it is found that they are acquaintance of Murali. Ex.P-1 is alleged to have been written by P.W-6 as per the evidence of P.W-1 Manikandan but, when P.W-6 the Sub-Inspector of Police was cross examined he denied the suggestion that he himself had written it down. The witnesses of P.Ws.1, 2, 4, 5 & 6 speak about Murali but the said Murali had not been examined. As per the evidence of P.Ws.1, 2, 4 & 5, immediately after the occurrence, P.W-1 caught hold of the Accused and handed over to them. But, it is stated by P.W-6 that in the presence of witnesses Mahalingam, the material objects, two wheeler bearing Registration No.TN-42-P-3733 Vivo cell phone, Knife and Rs.300/- were not seized in the presence of Mubharak Ali and Mahalingam. Therefore, the evidence of the Prosecution is found unbelievable. The occurrence is alleged to have taken place in broad day light in a busy street. As per the evidence of P.W-7 the Investigation Officer, he was not sure of the availability of CCTV cameras in the street. If the incident had actually taken place, the mobile Phone along with call records could have been produced before the trial Court. The video-graph of the incident also could have been produced. P.W-4-Mahalingam had stated that in his presence the material objects were not seized or produced



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in the Police Station. Further, the mahazar's were typed/written and he had signed it in the Police Station. If that be so, it is a made believe case as stated by the learned Counsel for the Appellants. Witnesses P.W-1 to P.W-5 mentioned the names of A-1 & A-2. That shows that they were familiar figures. In a busy street in broad day light by around 11 and 11.30 A-1 & A-2 attempted to waylay P.W-1 and seized his mobile phone and Rs.300/- using the knife is found unbelievable.

10. Considering the fact that P.W-1 to P.W-5 are acquaintances in the same street, the non-examination of the said Murali is found to affect the case of the Prosecution. P.W-7 had stated CCTV Cameras are available in the street. In the absence of any video-graph regarding the incident, the incident as alleged by the Prosecution is found unbelievable. In the light of the evidence, in cross examination of P.Ws-1, 2, 4, 5, 6 & 7 there are many loopholes in the case of the Prosecution. Therefore, the evidence of the Prosecution had not proved the charges beyond reasonable doubt.

11. The learned Principal District and Sessions Judge, Tiruppur, had failed to appreciate the facts and circumstances of the case as available in the entire evidence of the Prosecution witnesses. Therefore, the submission



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of the learned Additional Public Prosecutor that the learned Principal District and Sessions Judge, Tiruppur had, on proper appreciation of evidence, arrived at a conclusion that the Prosecution had proved the case beyond reasonable doubt is found unacceptable. Therefore, the argument of the learned Additional Public Prosecution is rejected. In the light of the submission of the learned Counsel for the Appellant/Karthikeyan/A2 in Crl.A.No.662 of 2018 and Appellant/Jana @ Janagaraj/A1 in Crl.A.No.278 of 2019 points raised by the learned Counsel for the Appellants is found acceptable in the facts and circumstances of this case as available through the evidence of P.W-1 to P.W-7. Therefore, this Court arrives at a conclusion that the learned Judge had not properly considered the entire materials before him through the evidence of P.W-1 to P.W-7 and Ex.P-1 to Ex.P-10.

12. In the light of the above discussion, the Point for consideration is answered in favour of the Appellants and against the Prosecution. This Court holds the judgment dated 05.10.2018 in S.C.No.47 of 2018 on the file of the learned Principal District and Sessions, Judge, Tiruppur convicting the Appellants/Accused is perverse and the same is to be set aside.



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In the result, **these Criminal Appeals are allowed**. The judgment of conviction recorded by the learned Principal District and Sessions Judge, Thiruppur, in S.C.No.47 of 2018, dated 05.10.2018 is set aside as perverse. The Appellants/Accused Nos.1 and 2 are acquitted from the charges. The fine imposed on A-1 and A-2 is ordered to be refunded. The bail bonds executed by the Appellants 1 and 2 are to be cancelled.

The service rendered by Thiru.V.Perarasu, learned Counsel nominated by the Legal Aid Committee to appear on behalf of the Appellant/Accused in Crl.A.No.278 of 2019 is appreciated.

22.12.2023

vsn/srm

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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To

The Principal District and Session Judge,
Tiruppur



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SATHI KUMAR SUKUMARA KURUP.J,

vsn/srm

Common judgment made in

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