



Crl.A.(MD)No.431 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 27.11.2024

Pronounced On : 18.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A.(MD)No.431 of 2022

and

Crl.A.(MD)No.509 of 2024

In Crl.A.(MD)No.431 of 2022

Veerapandi @ Karthick

... Appellant / Accused No.2

Vs.

State through

The Inspector of Police,
S.S.Kottai Police Station,
Sivagangai District.

(In Crime No.123 of 2012)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records connected with the Judgment rendered by the Additional District and Sessions Judge, Sivagangai in S.C.No.57 of 2013 dated 30.03.2022 and set aside the same and consequently, acquit the appellant.

For Appellant : Mr.R.Prakash



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For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor.

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In Crl.A.(MD)No.509 of 2024

Vasudevan

... Appellant / Accused No.1

Vs.

State through
The Inspector of Police,
S.S.Kottai Police Station,
Sivagangai District.
(In Crime No.123 of 2012)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records pertaining to the Judgment dated 30.03.2022 in S.C.No.57 of 2013 on the file of the Additional District and Sessions Judge, Sivagangai and set aside the same and consequently, acquit the appellant.

For Appellant : Mr.T.A.Ebenezer

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor.

COMMON JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

These appeals are directed against the Judgment dated 30.03.2022 made in S.C.No.57 of 2013 on the file of the Additional District and



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Sessions Judge, Sivagangai. By the impugned Judgment, A1-Vasudevan was convicted under Section 302 of IPC & sentenced to undergo life imprisonment and also ordered to pay a sum of Rs.10,000 as fine and under Section 392 r/w 397 of IPC & sentenced to undergo 10 years RI and also ordered to pay a fine of Rs.10,000/-. The second accused Veerapandi was convicted under Section 392 IPC and sentenced to undergo 10 years RI and also ordered to pay fine. Questioning the same, the second accused Veerapandi has filed Crl.A.(MD)No.431 of 2022. The first accused Vasudevan has filed Crl.A.(MD)No.509 of 2024.

2. The case of the prosecution is as follows:-

Sathyamoorthy / deceased was the correspondent of the Leo Primary School. The first accused had worked as acting driver for Sathya Moorthy for a short period. The second accused was the friend of the first accused. He approached Sathyamoorthy prior to the occurrence and asked for financial assistance. On 05.12.2012 at about 13.30 hours, Sathyamoorthy was going to Odappatti Village in his two wheeler. P.W.5 is a resident of Kattanippatti Village. He was grazing his cattle when he saw Sathyamoorthy coming in a two wheeler followed by two persons



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riding a bike. P.W.5 and his mother heard a scream. When they rushed to the spot, they found Sathyamoorthy lying in a pool of blood. They then rushed to the main road to give information. They saw an omni van coming and they stopped it. In the omni van, they found P.W.4-Uthami who was working as Headmistress of the Leo Nursery School. P.W.4 came to the spot. She then informed the family of Sathyamoorthy who rushed immediately. Then, Sathyamoorthy was taken in P.W.4's Omni Van to Kasthuri Priya Hospital. He was then shifted to the Madurai Meenakshi Mission Hospital at around 5.45 pm. On 06.12.2012, complaint was lodged before the S.S.Kottai Police Station. Based on the said complaint, Crime No.123 of 2012 was registered for the offence under Section 397 of IPC. On 08.12.2012, the Inspector of Police, SS Kottai Police station arrested the accused on suspicion. Based on their disclosure statement, M.O.2-four sovereign neck chain, M.O.3-bracelet, M.O.4-nokia cell phone and M.O.5-arali wooden stick were recovered. On 13.12.2012, at about 9.30a.m, Sathyamoorthy passed away. Thereupon, alteration report was filed and the offence under Section 302 of IPC was included. Other witnesses were examined and final report was filed before the Judicial Magistrate, Thiruppathur. It was taken on



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file in P.R.C.No.10 of 2013. It was committed to the Sessions Court and made over to the Additional District and Sessions Judge in S.C.No.57 of 2013 for trial. The accused were charged for having committed the offences under Sections 302 & 392 r/w 397 of IPC. The accused pleaded not guilty and claimed to be tried. The prosecution examined P.W.1 to P.W.14 and marked Ex.P1 to Ex.P21. M.O.1 to M.O.6 were also marked. On the side of the accused, Ex.D1-Trauma Assessment Record in Meenakshi Mission Hospital, Madurai was marked. Incriminating circumstances were put to the accused during examination under Section 313 of Cr.P.C. The accused characterized them as false. The learned trial Judge after considering the evidence on record and hearing both sides, convicted and sentenced the accused as mentioned above. Challenging the same, the accused have independently filed the two criminal appeals.

3. The learned counsel appearing for the accused pointed out that there is no eye witness in this case. The prosecution witnesses are hear-say witnesses. They submitted that the testimonies of the prosecution witnesses must be regarded as hear-say evidence. In this case, according



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to the prosecution, the occurrence took place at 2.00 pm on 05.12.2012.

But the complaint was lodged only on 06.12.2012 at 6.45 am. The prosecution failed to explain the delay in lodging the complaint or registering the FIR. No Test Identification Parade was conducted. Even though the bracelet-M.O.3 was allegedly recovered from one Nagarajan, he was not examined. The medical records pertaining to the treatment of Sathyamoorthy had been suppressed. The deceased did not give any dying declaration. The learned counsel further submitted that Sathya moorthy could not have uttered any words as suggested by the prosecution witnesses. The defacto complainant did not name the accused in her complaint. One Muthuraman and Kavitha who had dispute with Sathyamoorthy alone had been named as suspects. The learned counsel called upon this Court set aside the impugned Judgment and acquit the accused.

4. Per contra, the learned Additional Public Prosecutor appearing for the prosecution submitted that the impugned Judgment is well reasoned and that it does not call for interference.



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5. We carefully considered the rival contentions and went through the evidence on record.

6. It is true that there are no eye witnesses to the occurrence. The case of the prosecution rests on circumstantial evidence. What calls for consideration is whether the chain of circumstances is complete and unerringly points to the guilt of the accused. P.W.5-Raja was grazing his cattle near Odappatti village. He was sitting beneath a peepul tree along with his mother. He saw an elderly person riding his two wheeler and two individuals were following him in a bike. P.W.5 heard a scream. He then rushed to the spot. He saw the two persons who came in the two wheeler lifting Sathyamoorthy. When those two individuals saw P.W.5 & his mother, they dropped Sathyamoorthy and ran away. Sathyamoorthy was bleeding. He had suffered injuries on his head and nose. P.W.5 rushed to the main road to give information about this. An Omni Van was coming in a direction and P.W.5 stopped it. In the said Omni Van, P.W.4-Vuthami was there. P.W.5 told P.W.4 about what happened. When P.W.4 came to the spot, she noted that Sathya moorthy's neck chain and bracelet as well as mobile phone were missing.



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That is why, Crime No.123 of 2012 was registered only for the offence under Section 397 of IPC.

7. P.W.1-Suganya is the daughter of the deceased Sathyamoorthy. P.W.4-Uthami was employed as Headmistress in the school run by Sathyamoorthy. On the occurrence date, Suganya claimed to have travelled in a bus to Melur. She claimed to have seen the accused standing near Mallakkottai Taluk. Likewise, P.W.4-Uthami also deposed that the accused were seen coming in a rash manner. This part of the evidence of P.W.1 as well as P.W.4 can even be ignored.

8. P.W.1 who is none other than the daughter of the deceased deposed that on the occurrence day at around 2.00 pm., she was telephonically informed that her father had been hit on the head and his gold jewelry (neck chain) weighing 4 sovereigns & bracelet weighing $\frac{3}{4}$ sovereign and mobile phone had been robbed and that Uthami was rushing him to Kasthuri Priya Hospital. P.W.5 also corroborated the same. Crime No.123 of 2012 was also registered only for the offence under Section 397 of IPC.



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9. On 08.12.2012, P.W.1 received information from SS Kottai Police Station at around 5.00 pm that the robbed items namely neck chain-M.O.2, bracelet- M.O.3 as well as nokia cell phone-M.O.4 have been recovered. The Inspector of Police informed P.W.1 that since the neck chain had been pledged with Sivagangai Branch of Sriram City Union Finance Limited, it could not be recovered. P.W.1 identified the bracelet as well as the nokia phone. It has been convincingly established by the prosecution that M.O.2 to M.O.4 were recovered only from the accused.

10. P.W.14 was working as Inspector of Police, SS Kottai Police Station. On 08.12.2012 at around 12.00 pm., she was inspecting the vehicle in Indra Nagar, S.Mampatti Village. She found two persons coming in a bike. When they were stopped, they dropped their vehicles and ran away. They were apprehended and enquired. A2-Veerapandi gave confession statement in the presence of P.W.9. Ex.P3 is the admissible portion. Pursuant to the said disclosure statement, M.O.2 which had been pledged with the Sivagangai Branch of Sriram City



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Union Finance Limited was recovered under Ex.P8.

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11. One Vignesh was working as manager of the said Sivagangai Branch. He had passed away. Therefore, P.W.13-Marimuthu who was working as document assistant in the Sivagangai Branch of Sriram City Union Finance Limited was examined. He deposed that on 19.12.2012 at around 2.30 pm, the Inspector of Police, SS Kottai Police Station came to their branch and told them that the police wanted to recover the jewelry pledged with the institution by Veerapandi @ Karthick. Thereupon, Vignesh, Branch Manager informed the police that on 05.12.2012, Veerapandi @ Karthick pledged the neck chain weighing 32.600 grams for a sum of Rs.61,800/-. The pledged receipt was marked as Ex.P14. The pledged jewelry was given to the police. Mahazar was also prepared. The seizure mahazar was marked as Ex.-P15. In the said mahazar, P.W.13 had signed as one of the witness along with one Thangaraj. Through the said witnesses, Ex.P16-letter dated 08.12.2012 written by the Branch Manager Vignesh addressed to the Inspector of Police, SS Kottai Police Station was marked. Vignesh had subsequently passed away. P.W.13 deposed that he was acquainted with



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the hand writing of the said Vignesh. Ex.P16 reads that on 05.12.2012, Veerapandi S/o.Thannasi came to Sivagangai Branch of Sriram City Union Finance Limited to pledge a gold chain weighing 32.600 grams for a sum of Rs.61,800/-. The said chain was with the said financial institution. It was undertaken that the gold chain would be handed over as and when required for trial. The said jewelry was formally seized on 19.12.2012 under Ex.P15-seizure mahazar. P.W.13-Marimuthu signed the said seizure mahazar along with one Thangaraj.

12. On 08.12.2012, Veerapandi took the police to Sivagangai Branch of Sriram City Union Finance Limited. Vignesh was the then branch manager. He gave a signed letter dated 08.12.2012 stating that on 05.12.2012, Veerapandi S/o.Thannasi came to their branch and pledged the gold chain weighing 32.600 grams for a sum of Rs.61,800/-. It was Vignesh who undertook to produce the jewellery as and when required for trial. Vignesh subsequently passed away. His letter dated 08.12.2012 was marked as Ex.P16 through P.W.13. P.W.13 was working as document assistant in the financial institution during the relevant time. He deposed that he was acquainted with the handwriting of Vignesh.



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The letter given by Vignesh was seized under Ex.P8. It is relevant to note that Ex.P8 reached the magistrate court on 10.12.2012. The gold chain itself was formally seized under Ex.P15 on 19.12.2012. Marimuthu-P.W.13 signed as witness along with one Thangaraj.

13. Along with A2-Veerapandi, A1-Vasudevan was also arrested on 08.12.2012 at around 12.00 pm. He also gave confession statement in the presence of P.W.9. The admissible portion of his confession statement was marked as Ex.P4. Pursuant to the said disclosure statement, M.O.4-Nokia cell phone and M.O.5-wooden log and M.O.3-bracelet were recovered. The wooden log was seized under Ex.P7-Mahazar. M.O.3-bracelet was seized under Ex.P9 from one Nagaraj. It is true that Nagaraj was not examined as witness. Ex.P9-seizure mahazar reached the magistrate court on 10.12.2012 itself. The nokia mobile phone was seized under Ex.P5. P.W.9-Krishnan had signed as witness. The recovery of these vital items namely gold chain-M.O.2, bracelet-M.O.3 and nokia phone-M.O.4 and wooden log-M.O.5 were proved through P.W.9. His testimony could not be shaken during cross-examination.



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14. The occurrence had taken place on 05.12.2012. Sathyamoorthy passed away only on 13.12.2012. FIR was originally registered only for the offence under Section 397 of IPC on 08.12.2012 itself. All the robbed items as well as the wooden log used for hitting Sathyamoorthy were recovered. The robbed items were also duly identified by the daughter of Sathyamoorthy on 08.12.2012 itself. These are clinching factors.

15. No explanation came forward from the accused as to how they came to possess the items which belonged to the deceased. We however have to express our surprise. A1 & A2 were together. When the occurrence took place. While A1 had been found guilty for the offence under Section 302 of IPC, the court below found A2 only for the lesser offence of Section 392 r/w 397 of IPC. This is probably because, they had common intention only to rob Sathyamoorthy and they probably did not have intention to cause to his death. Since common intention as envisaged under Section 34 of IPC was not there, A2 had been convicted for a lesser offence. No appeal has been preferred either by the defacto



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complainant or the State questioning the acquittal of A2 for the offence under Section 302 r/w 34 of IPC.

16. In this view of the matter, we are of the view that the impugned Judgment passed by the court below does not call for interference. The criminal appeals are dismissed. No costs.

(G.R.S. J.) & (R.P. J.,)
18.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Additional District and Sessions Judge, Sivagangai.
- 2.The Inspector of Police,
S.S.Kottai Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

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and
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