



Crl.A. Nos.443 of 2019 & 1054 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON	05.03.2025
PRONOUNCED ON	21.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**
and
THE NONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

Criminal Appeal Nos.443 of 2019 and 1054 of 2022

Jayaraj .. Appellant in Crl.A. No.443/2019/
Accused No.3

Vignesh @ Dhaneraj .. Appellant in Crl.A. No.1054/2022/
Accused No.2

Vs.

State rep. by:
The Inspector of Police
B-6 Peelamedu Police Station
Coimbatore District
Crime No.1332/2011

.. Respondent in both the appeals

Prayer : Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code against the judgment of the IV Additional District and Sessions Court, Coimbatore dated 09.04.2018 made in S.C. No.313 of 2012 and to set aside the same.

For Appellant : Mr.R.Sankarasubbu



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For Respondent : Mr.S.Rja Kumar
Additional Public Prosecutor

COMMON JUDGMENT

N.SENTHILKUMAR, J.

Challenging the judgment of conviction and sentence passed by the learned IV Additional District and Sessions Judge, Coimbatore dated 09.04.2018 in S.C. No.313 of 2012, the appellants have preferred these appeals. The appellants before this court are A3 and A2 respectively. Originally, a case was registered by the prosecution, more specifically by the Inspector of Police, B-6 Peelamedu Police Station, Coimbatore District in Crime No.1332 of 2011 as against the appellants herein and another person. After investigation was over, the respondent police filed a charge-sheet before the learned Judicial Magistrate No.6, Coimbatore, which was numbered as PRC No.16/2012. As the case is triable by the Court of Session, the same was committed to the Sessions Court and the same was taken on file by the IV Additional District and Sessions Judge as S.C. No.313 of 2012. During the pendency of the trial, the first accused absconded in participating in the trial and therefore, the case as against the first accused was split up and proceeded as against A2 and A3 herein.



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2. To prove the case of the prosecution, the prosecution had examined 20 witnesses as PWs.1 to PW20 and marked 37 documents as Exts.P1 to P37 and as many as 33 material objects were produced as MOs.1 to MO.33. On the side of the defence, neither a witness was examined nor a document was produced to prove their case.

3. The brief facts are as follows:

i) All the three accused, who were charged in the FIR, are friends. They wanted to help the second accused, who is the appellant in Crl. A. No.1054 of 2022, in order to settle his hand loan. Hence, all the three accused, decided to commit theft and based on the information given by the second accused, they decided to commit robbery in the office of A2, where he was working as a driver and A2 facilitated the free entry of A1 and A3 to the office premises.

ii) The deceased was employed in the factory where A2 was employed as a driver. The deceased used to leave the company on Friday evening and will return back to his factory on Monday morning at the early hours. On the early hours of 16.08.2011 at about 3.45 a.m, all the three accused, entered the premises of the factory to commit robbery. At that point of time, the deceased intervened and in the course of committing robbery, the accused caused the



death of the deceased.

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4. The case of the prosecution is that, in order to commit a robbery which was intervened by the deceased, the second accused/appellant in Crl.A. No.1054 of 2002 had caught hold of the deceased from his behind, the third accused/appellant in Crl.A. No.443 of 2019 had stabbed on the neck and the face of the deceased with knife and the first accused had inflicted cut injuries all over the body of the deceased. After committing the murder, the appellants had stolen Maruti Swift car bearing Registration No.TN-37 BC-0909 and had taken away a sum of Rs.14,000/-, which was kept in the factory. For the above said offence, originally, a case was registered under Sections 449, 392 and 302 r/w 34 IPC.

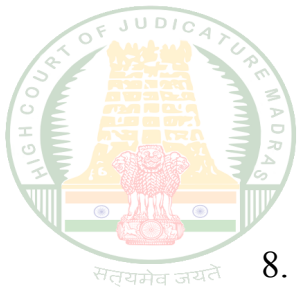
5. It is a clear case of circumstantial evidence, the prosecution had examined PW1, who is the owner of the company, who had deposed about the missing car and the death of the deceased Sathyamoorthy, who was working as Manager with PW1, by preferring a complaint, which was treated as Ext.P1. PW1 had deposed before the trial court that he had identified the material objects, namely gold ring with nine gem stones, which was marked as MO1, a gold ring with coral stone, which was marked as MO2, a wrist watch, which



was marked as MO3 and other material objects, which were seized by the police as MOs.4 to MOs.10.

6. PW2, a relative of PW1 had deposed that when they came to the factory, they have witnessed that the car was stolen and the material objects were also have been missing. Apart from that the deceased was lying in the pool of blood by succumbing to cut injuries and other injuries, all over the body. PW2 had narrated the entire case and had identified the second accused, namely the appellant in Crl.A. No.1054 of 2022, who was working as a driver in the said factory.

7. PW3 also reiterated as that of PW2. PW4 is the brother of the deceased, who had deposed that on 13.08.2011, the deceased had informed PW4 that he had reached Periyakulam and is going to stay there for two days from 13.08.2011 to 15.08.2011 and this information was communicated by the deceased to PW4. He further deposed that the deceased had told him that he would be leaving Periyakulam to Coimbatore by 10.00 p.m on 15.08.2011. However, subsequently, he came to know about the death of his brother and identified MOs.1 to 3, belonging to the deceased.



8. PW5 is the wife of the deceased and reiterated the evidence as that of PWs.3 and 4 and had identified MOs.1 to 3 and MO11, amulet, which was worn by the deceased.

9. PW6 is the watchman, who was working in the factory where the deceased was done to death. Though PW6 had turned hostile, he had admitted that he saw the second accused entering into the premises of the factory around 11.00 p.m.

10. PW7 was working as a watchman in another gate on the date of occurrence from 9.00 p.m to 6.00 a.m and he came to know about the incident on the next day.

11. PW8 is the Toll Gate operator attached to Salem Toll Plaza and he was employed on shift basis from 6.00 a.m to 2.00 p.m, 2.00 p.m to 10.00 p.m and from 10.00 p.m to 6.00 a.m. These are the shift times where PW8 was employed and on 19.08.2011, he had identified the car bearing Registration No.TN-37 BC-0909, which was stolen by the accused persons and it crossed the toll on 16.08.2011. The photograph which was captured by the CCTV



attached to the Toll Plaza where the Registration number of the car was found clear and the identity of the accused was not clear so as to fix the person who had stolen the vehicle. The said photo was marked as Ext.P5.

12. PW9 who speaks about the mahazar witness, who had affixed signature in the confession statement of the second accused/appellant in Crl.A. No.1054 of 2022 and the confession statement was marked as Ext.P6 and the signature of the witness was admitted as Ext.P7. Ext.P8 is the Mahazar in which MO2, ring was seized. With regard to MO3, which was recovered under the Recovery Mahazar, which was marked as Ext.P9 and cash was recovered under the Mahazar Ext.P11. It is the currency notes and their photocopies were marked as Ext.P12.

13. PW10 is another mahazar witness for sketch, observation mahazar. The observation mahazar was marked as Ext.P13 and the recovery was made under Ext.P17. The recovery mahazar included the blood stained earth 1 and 2, the broken lock, MO1 to MO11, which are the blood stained dress and other properties found near the place of occurrence. After the recovery was made by the prosecution, the body of the deceased was sent to the hospital for post-mortem.



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14. PW12 had deposed that he had advanced loan to the second accused.

PW17, the doctor, who had conducted the post-mortem, had furnished his report, which was marked as Ext.P27, opining that the deceased appeared to have died due to shock and haemorrhage due to the multiple injuries on neck.

15. The learned counsel appearing for the appellants contended that the evidence of PW1, who is the owner of the factory had only identified that the car has been stolen and the deceased was done to death and had narrated about the sequence of occurrence. Except the confession and the recovery from the appellants, there is no other material to connect the appellants with the crime. The learned counsel appearing for the appellants in unison had lamented the fact that the trial as against the first accused was split up and the same is now pending before the Sessions Court at Coimbatore. They further contended that in the absence of any identification, as to the last seen theory before the crime of occurrence, there is no evidence to connect the appellants and the murder. The only evidence available is that of the watchman, PW6, who had only seen the second accused/appellant in Crl.A. No.1054/2022 entering inside the factory and not in the company of the deceased so as to begin and conclude the evidence of last seen theory as that of the accused and that deceased were last



seen by PW6. They contended further that the trial court had convicted the appellants, namely Accused 3 and 2 for offence under Sections 449, 392 and 302 r/w 34 IPC. The learned counsel appearing for the appellants, who contend that there is no direct evidence to connect the appellants to the perpetrator of the crime and had pleaded that the offence except the recovery from the accused that is based on the confession statement, the appellants cannot be taken into consideration for any recovery made based on the confession cannot be relied upon as a conclusive proof.

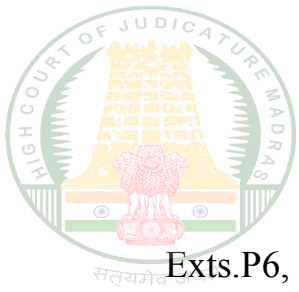
16. The evidence of PW1, who had depose that the recovery made from the accused persons, namely MOs.1 to 10. Based on the weak evidence of recovery mahazar alone, the conviction could not be sustained. Admittedly, in a case of circumstantial evidence and most specifically, when the prosecution contends that it is a case of murder for gain, then the recovery assumes greater importance. The place of occurrence and the time of occurrence will speak for itself and the court should be more cautious when evaluating the evidence available on record.

17. The witnesses examined on the side of the prosecution could only narrate the factum of murder, except the watchman, who was examined as



PW6, had seen the deceased in the premises of the factory, where the crime was committed and not seen the accused and the deceased together, which is the most important and essential ingredient to establish the last seen alive theory. However, the recovery made from the appellants based on the confession given by them is punishable under Section 27 of the Indian Evidence Act, 1872. The witnesses, who had spoken about the recovery, had deposed that such recovery was made based on the confession, which led to the recovery and such evidence cannot be ignored.

18. At this stage, this court, cannot lose its sight that the case as against A1 is split up and the trial is going on as against A1 and with regard to recovery made from the appellants herein, the contention of the appellants that they could be only answerable for having in their possession the stolen goods. Taking into consideration the over all circumstances and the evidence adduced before the trial court and there is no evidence to connect the accused to convict for the offence under Section 302, the appellants are acquitted under Section 302 IPC and that for the offence committed by the appellants, Section 392 IPC will attract. However, taking into consideration of the recovery from the appellants with regard to MOs.1 to 3 and cash, which were recovered under



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Exts.P6, P8, P9, P11 and P12, for which the appellants had already underwent imprisonment for a period of seven years. Under Section 392 IPC, the maximum period of sentence could be awarded, shall be extended to 10 years and taking into consideration the period of sentence already undergone by the appellants/accused 2 and 3, namely 7 years rigorous imprisonment will be sufficient as conviction period and recording the conviction under Section 392 of IPC against the above appellants, both the appellants can be set at liberty.

19. Accordingly, both appeals are partly allowed in the above terms. The judgment of the IV Additional District and Sessions Court, Coimbatore dated 09.04.2018 made in S.C. No.313 of 2012, is set aside. The appellants, namely accused 2 and 3, are directed to be set at liberty, if their presence is not required in connection with any other case.

[M.S.R., J.] [N.S., J.]
21.03.2025

Asr

To

1.The IV Additional District and Sessions Judge, Coimbatore

2.The Inspector of Police



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B-6 Peelamedu Police Station
Coimbatore District
Crime No.1332/2011

3.The Public Prosecutor, High Court, Madras

M.S.RAMESH, J.
and
N.SENTHILKUMAR, J.
Asr

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Dated : 21.03.2025