



Crl.R.C.No.988 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.988 of 2021 and
Crl.M.P.No.5844 of 2023

1.Babu @ Nagababu
2.Thiyagu

... Petitioners

Vs.

The State Represented by its
The Inspector of Police,
Sipcot Police Station,
Krishnagiri District.
(Crime No.1528/2013).

... Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Code of Criminal Procedure, to call for the records in Crl.A.No.49/2019 on the file of the learned Additional District Judge, Hosur dated 27.07.2021 confirmed in S.C.No.102 of 2016 on the file of the learned Assistant Sessions Judge, Hosur dated 25.09.2019 and set aside the same.

For Petitioners : Mr.S.Manoharan

For Respondent : Mr.Leonard Arul Joseph Selvam,
Additional Public Prosecutor

ORDER



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Challenging the judgment, dated 27.07.2021 in Crl.A.No.49 of 2019 passed by the learned Additional District Judge, Hosur (lower appellate Court) confirming the judgment of the learned Assistant Sessions Judge, Hosur (trial Court) in S.C.No.102 of 2016 dated 25.09.2019, the present Criminal Revision Case is filed.

2.Conviction and Sentence of the trial Court in S.C.No.102 of 2016 are as follows:

<i>Accused</i>	<i>Charges Framed</i>	<i>Conviction and Sentence</i>
A1 & A3	For offence under Section 394/397 IPC.	A1 & A3 sentenced to undergo Rigorous Imprisonment for 7 years each and to pay a fine of Rs.2,000/- each, in default, to undergo one year Rigorous Imprisonment each.
A1 & A3	For offence under Sections 120B & 109 IPC.	Acquitted
A2 & A4 to A8	For offence under Sections 120B, 395 r/w 397, 395 r/w 397 r/w 109 IPC.	Acquitted

3.Case of the prosecution is that PW1/defacto complainant is the Manager and Store-In Charge of M/s.V.S.Agencies, a Dealer of T.V.S products



run by PW3. After supply of materials, PW1 collects the money for the materials supplied. Likewise, on 29.11.2013, PW1 went to Bangalore, collected Rs.16,00,000/- (Rupees sixteen lakhs only), travelled back to Hosur in SVS Bus. As PW1 was reaching Hosur, he called PW2 the Manager-In-Charge of vehicles, to pick him. PW1 got down in Hosur Dharga Bus Stand, thereafter, PW1 and his colleague/PW2 travelled in a bike to owner's house PW3. When they were nearing PW3's house, four persons waylaid them attempted to snatch the bag from PW1, who threw the bag to PW2, A1 caught hold of PW1 and stabbed him. The other accused caught hold of PW2 and he was also stabbed. Both sustained bleeding injuries, the cash bag snatched away and all accused fled from the scene. PW1 came to the house of PW3, rang the bell, PW3 came out and saw both of them with bleeding injuries, with the help of neighbours, took both of them to Ashok Hospital, Hosur, from there, information sent to the respondent Police.

4.PW9, Sub Inspector of Police visited the hospital, recorded the complaint (Ex.P1) of PW1 and registered FIR (Ex.P40) in Crime No.1528 of 2013 for offence under Section 394 IPC and handed over the investigation to PW10. PW10, Investigating Officer visited the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P42), examined the



witnesses and recorded their statements. In the meanwhile, on 05.12.2013, getting information about accused assembled in the house of one Rajendran, PW10 went there, in presence of PW7 & PW8, Village Administrative Officer and Village Assistant, arrested the accused, recorded their confessions (Exs.P43 to P49). The money shared by the accused between themselves produced by them, all recorded in the recovery mahazar, thereafter, all accused produced for remand. The Doctor/PW6 who treated PW1 & PW2, examined and medical records (Exs.P4 to P7) collected. Earlier, PW10 collected the articles found in the scene of occurrence recorded in a mahazar. PW1 & PW2 identified the accused during Test Identification Parade. On conclusion of investigation, charge sheet filed in this case.

5.During trial, on the side of the prosecution, PW1 to PW10 examined and Exs.P1 to P57 marked and MO1 to MO8 collected. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the petitioners/A1 & A3 and acquitted the other accused/A2, A4 to A8. On appeal, the lower appellate Court confirmed the conviction of the trial Court. Against which, the present Criminal Revision Case is filed.



6.Learned counsel for the petitioners submitted that in this case, the evidence of PW1 & PW2 are contradictory to each other, apart from them, there are no eye witnesses to the occurrence. PW3, the Employer of PW1 admits that after ring of calling bell, he opened the door and saw PW1 standing near the door and PW2 lying unconscious on the floor. PW5, neighbour of PW3 confirms he came to scene of occurrence after hearing the commotion. PW3 & PW5 not seen the occurrence. Learned counsel further submitted that in this case, PW1 in his complaint (Ex.P1) to PW9 not given any specific features of the accused and he only stated that four persons, aged between 35-40, waylaid them and one of them was wearing a black coloured T-shirt and black pant. Further, one of the them caught hold of him and another person stabbed him on his left forearm, neck and left shoulder. PW2 was stabbed on his left hand, left wrist, near the shoulder, head and also a stab in the stomach. Further, PW1 to PW5 admit that the incident occurred at nighttime and it was dark, no light was available. In the complaint, PW1 specifically stated that chilly powder thrown on his face and PW2 by the accused. PW6, Doctor who treated PW1 & PW2 and issued medical records Exs.P4 & P7 not stated about chilly powder, irritation or reddishness in the eyes of PW1 & PW2 during his examination. Even in the Accident Registers (Exs.P4 & P6), there is no reference to chilly powder found on the face of PW1 & PW2.



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7.He further submitted that from the complaint (Ex.P1), it is seen that four persons attacked PW1 & PW2, but charge sheet filed against eight persons. In this case, the amount of Rs.16,00,000/- reduced to Rs.12,75,000/- and later gives an explanation that the balance amount collected by demand draft. But no demand draft collected by the prosecution and there is no reference what happened to the demand drafts. The respondent Police conveniently apportioned each accused a certain amount and projected a case as though all accused participated in the crime, snatched the cash bag, fled from the scene, divided and shared the money, and found in possession when they were apprehended, that too, after six days of the occurrence in the house of one Rajendren. In this case, the said Rajendran not examined to prove the presence of the petitioners in the said hours, no explanation given for non examination of Rajendran. PW7, Village Administrative Officer admits that after PW10 reached the house of Rajendran, he was called. He further admits that he stood as witness at the request of the Police and in the past in several cases he stood as witness confirming that he is in the nature of stock witness. None of the neighbours of Rajendran called as witness for arrest and recovery. PW8, Village Assistant confirms that he does not know anything about arrest, recovery, only at the instance of the Police, he signed as witness. In this case,



eye witnesses PW1 & PW2 admit that the photographs of the accused published in the daily newspapers and prior to Test Identification Parade, photographs of the accused shown to them. PW10 admits that the accused arrested on 05.12.2013 and 45 days thereafter, Test Identification Parade conducted. In the meanwhile, the accused brought to the remanding Court on three occasions. Hence, the identification of the accused becomes doubtful, coupled with the recovery, which is highly artificial.

8.Learned counsel further submitted that the Doctor/PW6 confirms that the injuries sustained by PW1 is simple in nature and PW2's injury is grievous since there was injury on the stomach which ruptured the small intestine. In this case, the weapon not identified and the overtact not specifically attributed to the petitioners. The evidence of PW1 is that A2 in this case attacked and stabbed PW1 & PW2, but he was acquitted from all charges. The trial Court not considered these contradictions and attributed the infliction of injuries to the petitioners and convicted them, which is not proper when the evidence and materials are otherwise. When the trial Court found the evidence available in this case doubtful and giving benefit of doubt to the other accused, the same ought to have extended to the petitioners. In support of his submissions, the learned counsel for the petitioners relied on the decision of the Hon'ble Apex



Court in *Javed Shaukat Ali Qureshi v. State of Gujarat* reported in *2023 SCC OnLine 1155*.

9.Learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, PW1 & PW2 are injured witnesses. PW1 went to Bangalore for collection of money and came back to Hosur travelling in SVS bus. On 29.11.2013, PW1 called PW2 to pick him. Thereafter, PW1 & PW2 had gone to the house of PW3 to handover the collected amount. On the way, four persons, who were hiding behind the tree near the house of PW3, waylaid, restrained them and snatched the cash bag carried by PW1. When PW1 shown resistance, he was inflicted with cut injury and bag was passed on to PW2, who collected the bag, was running towards the house of PW3, at that time, PW2 was attacked and stabbed in his stomach which caused rupture to the small intestine, who fell unconscious. The accused came in the bike took away the cash bag and fled the scene. PW1 reached the house of PW3, rang calling bell, PW3 opened the door, saw both PW1 and PW2 injured and PW2 lying in the floor. PW5, a Neighbour, on hearing commotion, came out from the house and saw PW1 & PW2 with injuries. PW3 & PW5 made arrangement, took PW1 & PW2 to Ashok Hospital, Hosur, from there, information sent to PW9, Sub Inspector of Police. PW9 visited the hospital,



recorded the statement of PW1, FIR (Ex.P40) and handed over the investigation to PW10. The Investigating Officer took up investigation, visited the scene of occurrence, examined the witnesses, recorded their statements and in presence of PW4, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P41), thereafter, on getting information about presence of all accused in the house of one Rajendran, PW10 went there, in presence of PW7 & PW8, all accused arrested, confession statements (Exs.P42 to P49) recorded, based on the confession statements, the looted amount shared between the accused, recovered. Based on the confession statements, MO4 to MO8 seized. MO7 & MO8 are the two steel button knives seized from the accused.

10.He further submitted that from the scene of occurrence, chilly powder packet/MO1, handle and strap of black colour bag/MO2 & MO3, in which money carried by PW1, all seized in this case. After the arrest of the accused, during remand period, Test Identification Parade conducted. PW1 & PW2 identified the accused. After examining the Doctor/PW6 and collecting medical records (Exs.P4 to P7), charge sheet filed. During trial, PW1 to PW10 examined and Exs.P1 to P57 marked and MO1 to MO8 collected. On conclusion of trial, the trial Court acquitted A2 & A4 to A8, but convicted the petitioners/A1 & A3. The lower appellate Court confirmed the conviction of



the trial Court. The petitioners are against the concurrent judgment of conviction, need no interference. Hence, he prayed for dismissal of the revision.

11.This Court considered the rival submissions and perused the materials available on record.

12.In this case, PW1 & PW2 both injured eye witnesses. PW3 and PW5 admit that they have not seen the occurrence proper, but they took PW1 & PW2 to Ashok Hospital, Hosur on 29.11.2013. PW6 is the Doctor attached to Ashok Hospital who treated PW1 & PW2 and issued Accident Registers (Exs.P4 & P6) and Wound Certificates (Exs.P5 & P7). From Ashok Hospital, information sent to respondent Police Station and PW9, Sub Inspector of Police visited the hospital, received the oral complaint (Ex.P1) of PW1, registered FIR (Ex.P40) and handed over the investigation to PW10.

13.According to prosecution, the occurrence took place on 29.11.2013 at about 07.30 p.m. when PW1 & PW2 proceeding to the house of PW3/Owner to handover the cash collected for supply of materials. When PW1 & PW2 got



down from the bike and proceeding to the house of PW3, four persons waylaid them and a tall person wearing black T-Shirt and black pant attempted to snatch the bag from PW1 and also inflicted stab injury to his left forearm, neck and left shoulder. As the cash bag passed on to PW2, the remaining three persons caught hold of PW2 and when PW2 resisted to give the cash bag, he was stabbed in his abdomen and back of his chest. Thereafter, the cash bag snatched by the accused and they fled in their bike. PW4, Cashier employed under PW3, was called at 10.15 p.m. he reached the scene, in his presence, Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P41) prepared by PW10.

14. In this case, the arrest and recovery from the accused on 05.12.2013 conducted in presence of PW7, Village and Administrative Officer and PW8, Village Assistant. Admittedly, the witnesses spoken about the occurrence are PW1 & PW2. The evidence of PW1 & PW2 are contradictory to each other. PW1 states that after the accused fled from the scene, he went to the house of PW3, rang the bell, 10 minutes later PW3 came out and saw PW1 & PW2 injured. PW1 further states that PW2 found unconscious lying on the floor. The evidence of PW2 is that he opened the gate of PW3's house, entered the house, banged the door and rang calling bell, at that time, PW3 came along with his daughter, wife, thereafter, PW1 & PW2 were taken to the hospital.



PW5 except helping PW3 to take PW1 & PW2 to hospital, he does not state anything more. The evidence of PW1 & PW2 are contradictory to each other.

15.In this case, PW6 is the Doctor who examined PW1 & PW2 and issued Accident Registers (Exs.P4 & P6) and Wound Certificates (Exs.P5 & P7). In the Accident Register of PW1 (Ex.P6), it is mentioned PW1 was attacked by four unknown persons. Likewise, in the Accident Register of PW2 (Ex.P4), PW2 states that four persons attacked him. In Ex.P4, it is recorded PW2 was brought by his friend Praveen. But this Praveen not examined as witness in this case. In Ex.P6 (Accident Register of PW1), there is no reference who brought PW1 to the hospital. PW3 in his evidence stated that with the help of PW5, he took PW1 & PW2 to Ashok Hospital, Hosur. Thus, in this case, the person who brought PW1 & PW2 to the hospital becomes questionable. The evidence of PW3 and PW5 taking PW1 & PW2 to the hospital becomes doubtful.

16.In the Accident Registers and Wound Certificates (Exs.P4 to P7), the Doctor/PW6 records occurrence took place near Dharga where PW1 alighted and met PW2. According to prosecution, the occurrence took place near the house of PW3. Hence, the place of occurrence shifted becomes doubtful. In



this case, all witnesses admit that the occurrence took place in the dark at nighttime and the street light was not burning.

17.In this case, the accused are total strangers to PW1 & PW2. Both admit photographs of the accused were shown to them prior to Test Identification Parade and they were asked to identify the persons shown in the photographs during Test Identification Parade, no clarification or explanation by the prosecution. PW10, Investigating Officer admits that the accused arrested on 05.12.2013 and 45 days thereafter only, Test Identification Parade conducted, during this period, on three occasions, the accused brought for remand extension to the Lower Court. Hence, the Test Identification Parade and identification of the accused has no significance in this case. Added to it, PW2 specifically states about three persons caught hold of him and one of them, stabbed him and names of A2 Saravanan. In this case, PW1 & PW2 could not identify the weapons (MO7 & MO8).

18.In the complaint (Ex.P1), it is stated chilly powder was thrown on the face of PW1 & PW2 by the accused. PW6, Doctor who treated PW1 & PW2 and issued medical records (Exs.P4 & P7) not stated about presence of chilly



powder or PW1 & PW2 complained of irritation or reddishness in their eyes at the time of examination.

19.The other aspects of the case is that the accused arrested on 05.12.2013, from eight accused Rs.11,32,000/- seized. It is projected that all accused gathered in the house of A1 who was staying in the first floor as Tenant under one Rajendran, House Owner. Neither Rajendran nor any nearby residents called to be a witness for arrest and seizure. On the other hand, PW7 & PW8 confirmed that PW10 on reaching the place of the accused, called them to be a witness and thereafter they had gone there. The evidence of PW10 is that he got information that all accused assembled in a house of Rajendran at Door No.52/18-19 behind Kani Hotel and they were rounded, arrested, from each accused, the following amounts seized and recovered.

1. From A2 on 06.12.2013 at 03.30 a.m., Rs.1,35,000/- and button knife recovered.
2. From A3 on 05.12.2013 at 22.15 hours, Rs.1,35,000/- recovered.
3. From A4 on 05.12.2023 at 19.45 hours, Rs.1,67,000/- and red colour star city bike recovered.
4. From A7 on 05.12.2013 at 23.45 hours, Rs.1,35,000/- recovered.
5. From A5 on 05.12.2013 at 18.30 hours, Rs.1,55,000/- recovered.



6. From A6 on 05.12.2013 at 21.30 hours, Rs.1,35,000/- recovered.

7. From A8 on 06.12.2013 at 01.00 hours, Rs.1,35,000/- recovered.

8. From A1 on 06.12.2013 at 02.15 hours, Rs.1,35,000/-, one star city bike and one button knife recovered. But all properties produced before the Court only on 18.12.2013.

20.PW7, Village Administrative Officer admits he had been witness for several cases at the request of Police and he is in the nature of stock witness. PW8, Village Assistant confirms that he does not know what is written in the confession statements and recovery mahazars, he signed at the request of the Police. Thus, PW7 & PW8 only acted as per the direction of PW10, is proved.

21.Further, though it is stated that arrest and confession took place in the house of Rajendran, all the confession statements are computer typed. PW10, Investigating Officer attempts to give an explanation that he took a laptop, typed the confession statements, thereafter with the mobile printer, print out taken. For the first time, PW10 states before the Court, but no such records available.

22.It is seen that the trial Court acquitted A2 & A4 to A8 and convicted



the petitioners for the reason PW1 identified A1 and PW2 identified A2.

During evidence, PW2 confirms that since it is almost five years from the date of occurrence, he is unable to identify the accused. PW2 not identified any of the accused. PW1 though states the name of A1, admits that photographs and names of the accused given by the Police. The trial Court convicted the 1st petitioner/A1 for the reason that on the date of PW1's examination, he named A1 and A1 was not present in the Court, hence, gave a finding PW1 identified A1 is not proper, more so, when PW1 in his complaint (Ex.P1) and to the Doctor/PW6 informs four unknown persons assaulted them. Further, PW1 admits photographs of A1, A2 & A3 were shown to him prior to Test Identification Parade and Police gave the name of A1. In such circumstances, it cannot be positively taken PW1 identified A1.

23. Though the lower appellate Court found that PW10 filed charge sheet that A1 to A3 were directly involved in the occurrence and the other accused abetted by watching at strategic spots and given information to A1 to A3 to commit offence, but no cross examination on this aspect done by the accused and the trial Court erred in acquitting the other accused, but thereafter the lower appellate Court had not taken any further action and accepted the benefit of doubt given to the other accused.



24.The finding of the trial Court that PW1 & PW2 identified A1 & A3 is not based on a proper analysis of the evidence and materials. The benefit of doubt given to A2 & A4 to A8 and acquitting them can be extended to the petitioners who stand on the same footing on the ground of parity.

25.The Hon'ble Apex Court in ***Javed Shaukat Ali Qureshi*** case (cited above) in paragraph No.15 held as follows:

“When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.”

26.In view of the above, this Court finds the petitioners stand on the same footing as of A2 & A4 to A8 who all acquitted by the trial Court and confirmed by the lower appellate Court. The above decision of the Hon'ble Apex Court is squarely applicable to the facts and circumstances of the case.

27.In the result, the judgment of the learned Assistant Sessions Judge,



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Hosur in S.C.No.102 of 2016 dated 25.09.2019 and the judgment, dated 27.07.2021 in Crl.A.No.49 of 2019 passed by the learned Additional District Judge, Hosur are set aside. The petitioners are acquitted from all the charges levelled against them. Fine amount if any paid shall be refunded. Bail bond if any executed shall stand cancelled. The petitioners are directed to be released forthwith unless they are required and confined in any case/proceedings.

28.Accordingly, this Criminal Revision Case stands allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

18.11.2025

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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Note: Issue Order Copy on 18.11.2025.

To

1.The Additional District Judge,
Hosur.

2.The Assistant Sessions Judge,
Hosur.



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M.NIRMAL KUMAR, J.

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3.The Inspector of Police,
Sipcot Police Station,
Krishnagiri District.

4.The Superintendent of Prison,
Central Prison, Vellore.

5.The Public Prosecutor,
Madras High Court.

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