



Crl.R.C.No.959 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2025
PRONOUNCED ON : 09.10.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.959 of 2021

Krishnamurthy

... Petitioner

Vs.

The State rep. by
The Sub Inspector of Police,
Omalur Police Station,
Salem District.
Crime No.235 of 2013

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. to call for the records and set aside the judgment dated 26.06.2020 made in Crl.A.No.226 of 2019 on the file of the Principal Sessions Judge, Salem, confirming the conviction and sentence imposed in judgment dated 23.10.2019 in S.C.No.287 of 2016 on the file of the Assistant Sessions Judge, Omalur and acquit the petitioner.



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For Petitioner : Mr.K.Prabakar
For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)
Assisted by Ms.Sumi Arnica

ORDER

The petitioner convicted by judgment, dated 23.10.2019 in S.C.No.287 of 2016, by the learned Assistant Sessions Judge, Omalur and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo two months simple imprisonment for the offence under Section 452 IPC and to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment for the offence under Section 394 r/w. 397 IPC. Aggrieved over the judgment of the trial Court, an appeal was filed by the petitioner before the Sessions Court in C.A.No.226 of 2019. The learned Principal Sessions Judge, Salem by judgment dated 26.06.2020 dismissed the appeal, confirming the judgment of the trial Court. Against which, the present revision is filed.



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WEB COPY 2.The case of the prosecution is that on 15.04.2013 at about 2:00 p.m.

At Mailapalayam in Naranampalayam Village, the defacto complainant/PW1, Sarasu, was in her house, at that time, the petitioner/accused, who is a tree climber came there and asked for some water to drink. PW1 had given the water. Since it was warm, he asked for cold water from the fridge. The defacto complainant entered the house and opened the fridge to get the cold water, at that time, the petitioner followed her from behind and pulled the gold thali chain. When she resisted, the petitioner, using his Koduval, caused a cut injury on her neck. When she resisted, he attacked with Koduval resulting in indiscriminate cuts. The defacto complainant was pushed to the bedroom and the gold thali chain snatched and petitioner fled using his bicycle. The defacto complainant came out shouting in pain. PW2/neighbour heard the shout and saw the petitioner fleeing in a cycle. PW5, another neighbor, both came, saw the defacto complainant with blood injuries, immediately called 108 ambulance, by that time, her husband also came and they took the injured to the Government Hospital, Salem. PW8/Casualty Doctor examined the victim



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and issued accident register. Since the victim insisted further treatment to be taken at a private hospital, the victim along with her husband went to Manipal Hospital, Salem and PW10 examined and treated the injured. On getting information from the Hospital, PW9/Sub-Inspector of Police went to the Hospital and recorded the complaint as stated by PW1. Since both the hands of PW1 had cut injuries and bandaged, she could not sign instead her husband signed the complaint. The patient was found conscious in fit state of mind, certified by the Duty Medical Officer at Manipal Hospital. Thereafter, PW11 took up investigation, visited the scene of occurrence, prepared observation magazine/Ex.P2 and rough sketch/Ex.P10 in presence of witnesses. Further, in the scene of occurrence, gold beads and blood-stained soil seized. Information of the petitioner received and he was arrested on 16.04.2013 at about 6:30 a.m. in the presence of PW6/Village Administrative Officer and PW7/Village Assistant. The accused gave a confession and based on his confession, MO1, MO2, MO3, MO4, MO5, MO9 and MO10 seized. The Investigating Officer showed the seized MO1 to the PW1/defacto complainant, who identified that it was her thali chain, statements of witnesses, namely the neighbours, Doctors from the

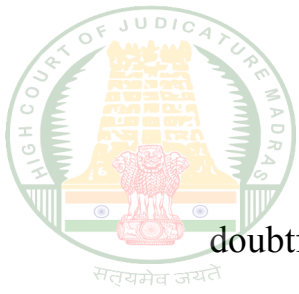


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Government Hospital, Salem and the Doctor from Manipal Hospital, Salem recorded and medical records collected. On completion of investigation, charge sheet filed. During trial, PW1 to PW11 examined, Ex.P1 to Ex.P12 marked and MO1 to MO10 produced on the side of the prosecution. On conclusion of trial, the Trial Court convicted the petitioner as stated above. Against which, the petitioner preferred an appeal in Crl.A.No.226 of 2019. The learned Principal Sessions Judge, Salem, by judgment dated 26.06.2020 dismissed the appeal confirming the conviction and sentence of the Trial Court. Against which, the present revision filed.

3.The contention of the learned counsel for the petitioner is that in this case, PW1/injured was taken to Government Hospital, Salem, where PW8/Doctor examined her and issued Accident Register/Ex.P7, wherein it is recorded that an unknown person caused injuries to her. Further, the Doctor at Manipal Hospital, PW10, in Ex.P9 records assault by an unknown person. Further, in Ex.P1/complaint, it is not signed by PW1 and it is signed by Ramachandran, husband of the defacto complainant. But the said Ramachandran not examined as witness, hence the complaint itself becomes



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doubtful. He further submitted that in this case, the arrest of the accused was shown on the next day i.e. On 16.04.2013, but PW1 was examined before the Trial Court on 20.11.2017, almost four years later. Hence, the identification for the first time in the docks becomes doubtful and cannot be a conclusive identification. He further submitted that in this case, the other witness, namely PW2, who is said to have seen the accused fleeing away on a cycle, in his earlier statement to the police, not stated anything about the petitioner coming out from the defacto complainant's house and fleeing away. In his evidence before the Trial Court, for the first time, he gives a contradictory statement, which the Trial Court failed to consider. Further, the other eye witness projected is PW5, who had not supported the case of the prosecution and confirms that he had not seen the petitioner coming out of the defacto complainant's house and fleeing away, hence, treated as hostile witness. But the Trial Court and the Lower Appellate Court given a finding as though the petitioner was spotted and identified by PW2 and PW5. He further submitted that in this case, PW6/Village Administrative Officer and PW7/Village Assistant are the witnesses for the arrest, confession and recovery. The statement of PW6 and PW7 are contradictory



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to each other, hence their statement is unbelievable. Further, the place of recovery is shown as the house of one Tamilarasi, who is said to be the sister of the accused. Further, the said Tamilarasi is not a witness to the seizure. In view of the same, the recovery also becomes highly doubtful. Further in this case, neither the Doctor who treated PW1 in Manipal Hospital nor the Duty Medical Officer who issued Ex.P9/Accident Register examined. No reason for the non-examination of said Doctors given. Thus, in this case, the identification of the petitioner becomes doubtful and the confession and recovery also become doubtful and medical record/Ex.P9 cannot be accepted. Further, the blood-stained articles seized at the scene of occurrence and the dress of the petitioner, namely MO8 and MO10 not detected with blood stains, hence fatal to the case of the prosecution. These factors not considered by both the Courts below.

4.In support of his contention, the learned counsel for the petitioner relied upon the decision of the Apex Court in the case of **Lakshmi Singh and others vs. State of Bihar** reported in **1976 Cri.L.J. 1736**, wherein the Apex Court held that the blood-stained earth found at the place of



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occurrence for chemical examination which could have fixed the situs of the assault ought to have been sent for chemical examination, but in this case it was departed for the reasons best known to the prosecution. Further, it had also held that defence version may be true. It is well settled that it is not necessary for the defence to prove its case with the same rigour as the prosecution is required to prove its case and it is sufficient if the defence succeeds in throwing a reasonable doubt on the prosecution case which is sufficient to enable the Court to reject the prosecution version.

5.He further relied upon the decision of the Apex Court in the case of ***George and others vs. State of Kerala and another*** reported in ***1998 Cri.L.J. 2034***, wherein the Apex Court held that it cannot be denied however that though not fatal, absence of the corroborative evidence of prior identification in a test identification parade makes the substantive evidence of identification in Court after a long lapse of time a weak piece of evidence and no reliance can be placed upon it unless sufficiently and satisfactorily corroborated by other evidence.



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WEB COPY 6.The learned counsel for the petitioner further relied upon the decision in the case of ***Kunju Muhammed alias Khumani and another vs. State of Kerala*** reported in ***(2004) 9 SCC 193*** for the point that there are contradictions between the evidence of PW6 and PW7. The evidence of PW7 confirming arrest, confession and recovery becomes highly doubtful. Though PW7 not treated hostile, the benefit of such evidence should go to the accused and not to the prosecution.

7.The learned Government Advocate (Crl. Side) strongly opposed the petitioner's contention and submitted that in this case, the petitioner was convicted by the Trial Court which was confirmed by the Lower Appellate Court. In this case, PW1 is a victim who was in her house, the petitioner who is a tree climber, came to the house of the defacto complainant and asked for water. When she went to the fridge to get cold water, the petitioner followed her from behind and pulled her gold thali chain, which was resisted by the defacto complainant and she was inflicted with cut injury using koduval. Thereafter when she further resisted, both her hands



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were cut and the gold thali chain was pulled and the petitioner escaped from the scene of occurrence using his cycle. The defacto complainant came out crying with pain and seeking help. PW2, a neighbor, heard the cry and found PW1 with blood injuries. He called 108 ambulance and also saw the petitioner fleeing by cycle. PW5, another neighbor, came there and he also saw PW1 with injuries and pain. By that time, the husband of PW1 came there and with the aid of 108 ambulance, the defacto complainant was taken to the Government Hospital, Salem. PW8/Doctor examined the victim and recorded the same in the Accident Register/Ex.P7. Since PW1 and her husband insisted for better treatment in a private hospital, against medical advice she was admitted in Manipal Hospital, Salem. Dr.Dinesh gave her treatment. Since Dr.Dinesh left the service of Manipal Hospital, PW10, who is familiar with the handwriting of Dr.Dinesh deposed and through him, Ex.P9 marked. At the time of marking Ex.P9, there was no objection for non-examination of Dr.Dinesh, but at this stage, raising a doubt over Ex.P9 is not sustainable. When the victim was in the hospital, PW9, Sub-Inspector of Police received information, recorded the statement of PW1. Since both her hands was injured and bandaged, she could not sign the complaint. The



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recorded information was explained to her, and on her behalf, her husband signed the complaint. Dr.Jayanthi certified the fitness and thereafter, PW11 took up investigation, visited the scene of occurrence, prepared observation mahazar/Ex.P2 and rough sketch/Ex.P10, recorded the statement of witnesses present in the scene of occurrence and after getting information about the accused, the petitioner was arrested on 16.04.2013. PW6/Village Administrative Officer and PW7/Village Assistant were called to be witnesses for the arrest and confession. MO1 and other articles seized near the house of Tamilarasi, who is the sister of the petitioner. On collecting medical records and other documents, charge sheet filed. During trial, PW1 to PW11 examined, Ex.P1 to Ex.P12 marked and MO1 to MO10 produced. The Trial Court considering all the aspects had rightly convicted the petitioner which was confirmed by the Lower Appellate Court. Hence, prayed for dismissal.

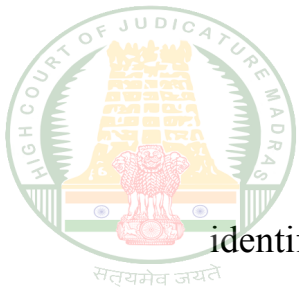
8.Considering the submissions made and on perusal of the materials, it is seen that in this case, PW1/defacto complainant is the victim who went into the house to bring cold water to the petitioner, at that time, the



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petitioner followed her from behind and snatched her gold thali chain, which was resisted by her. She was inflicted with a cut injury using a koduval on both her hands, thereafter the gold thali chain was snatched. The petitioner is said to have fled away using his cycle. PW1 raised alarm. PW2, a neighbour, is said to have seen the accused fleeing away using his cycle but in his earlier statement to the respondent police, he had not stated that he had seen the petitioner escaping in his cycle. The other projected eyewitness is PW5, but not supported the case of the prosecution. The only evidence is that of PW1. The evidence of Doctor from Government Hospital, Salem, PW8 and from Manipal Hospital, PW10, confirms that in the Accident Register it is recorded as unknown person. Added to it, PW1's husband, Ramachandran, who was with her in both Hospitals and while recording the statement, was not examined in this case. PW1 admits that the thali chain/MO1, was shown to her by the Investigating Officer the next day when she was in the hospital and she identified her jewel. In this case, the occurrence is said to have taken place on 15.04.2013 and there is no test identification parade to confirm the identity of the petitioner. For the first time, the petitioner was identified in the docks almost after four years. The



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identification becomes doubtful. No reason given for non-examination of the defacto complainant's husband. Added to it, the Doctor who treated the victim not examined. Though explanation for Dr.Dinesh given, no explanation was given for the non-examination of Duty Doctor Dr.V.Jayanthi who had given a fitness report and attested Ex.P1 and issued Ex.P10. The arrest and recovery becomes doubtful in view of the contradictory statements between the evidence of PW6 and PW7. Recovery is said to have taken place near the house of one Tamilarasi, who is said to be the sister of the petitioner, but the said Tamilarasi is not a witness to seizure mahazar/Ex.P5. Added to it, in this case, the properties reached the court only on 17.02.2014 as could be seen from Ex.P11 and no explanation given for such delay. These aspects not considered by both the Courts below. Added to it, the petitioner has no bad antecedents. Hence, this Court finds the conviction and sentence imposed by the Trial Court, confirmed by the Lower Appellate Court both not sustainable.

9.Accordingly, the judgment delivered by the learned Assistant Sessions Judge, Omalur in S.C.No.287 of 2016 dated 23.10.2019 confirmed



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by the learned Principal Sessions Judge, Salem in Crl.A.No.226 of 2019

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dated 26.06.2020 both set aside. The petitioner is acquitted from all charges. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

10.In the result, the Criminal Revision Petition stands allowed.

09.10.2025

Index:Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No

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To

- 1.The Sub Inspector of Police,
Omalur Police Station,
Salem District.
- 2.The Principal Sessions Judge,
Salem.
- 3.The Assistant Sessions Judge,
Omalur.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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