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CrI.A.No.766 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.08.2025

PRONOUNCED ON: 02.09.2025

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

CrI.A.No.766 of 2019

Karthick

...Appellant/A2

Vs.

State through
The Inspector of Police,
Tiruppur North Police Station,
Tiruppur District
(In Cr.No.1395 of 2005)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to call for the records and set aside the judgment and conviction imposed by the learned Principal District and Sessions Judge, Tiruppur, in S.C.No.38 of 2018 dated 12.09.2019 against the appellant/ A2.

For Appellant

: Ms.J.Jasmine Cina
for Mr.S.Mohamed Ansar

For Respondent

: Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem



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JUDGMENT

M.S.RAMESH,J.

The appellant herein, who was arrayed as the second accused in Sessions Case No.38 of 2018 on the file of the Principal Sessions Court, Tiruppur, was originally the third accused in the charge sheet filed by the prosecution. Since the case against the second accused was split up in PRC.No.1 of 2018 on the file of the learned Judicial Magistrate No.1, Tiruppur, the third accused was arrayed as the second accused before the Trial Court.

2. Through a judgement passed in S.C.No.38 of 2018 dated 12.09.2019, the second accused / appellant herein was found guilty of having committed the offence under Section 392 IPC and sentenced to undergo 7 years of rigorous imprisonment with a fine of Rs.5,000/-, in default of which, to undergo 6 months of simple imprisonment and for the offence under Section 302 IPC read with Section 34 IPC, he was sentenced to undergo life imprisonment with a fine of Rs.1,000/-, in default of which, to undergo 6 months of simple imprisonment. Both the sentences were ordered to run concurrently. This judgement of the



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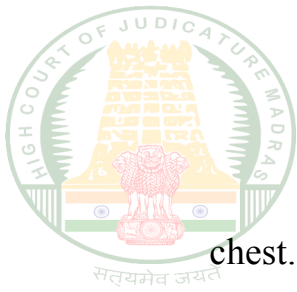
Sessions Court is under challenge in the present Criminal Appeal.

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3. For the sake of convenience, the appellant is referred to as the second accused (A2) and the accused Jayakumar, whose case was split up, referred to as third accused (A3). Incidentally, the Criminal Appeal No.96 of 2021 filed by A1 had abated, since he died during the pendency of the appeal.

4. The brief case of the prosecution is as follows:

4.1 The deceased Ramachandran, along with one Saravanan (P.W.3), Prakash (P.W.6) and one Sangeetha (P.W.7), were running an advertising agency. On the night of 09.05.2005, all the three accused, with the common intention of committing dacoity, went to Tiruppur in a Hero Honda motorcycle bearing Registration No.TN 38 L 3540. At about 11.30 p.m., the deceased was walking approximately 300 feet away from the Kongunagar Railway Gate. At that time, all the accused waylaid him and demanded his handbag, purse and cell phone, to which the deceased resisted. Thereupon, the appellant / A2 and A3 caught hold of the hands of the deceased, while A1 stabbed him in the lower abdomen and left



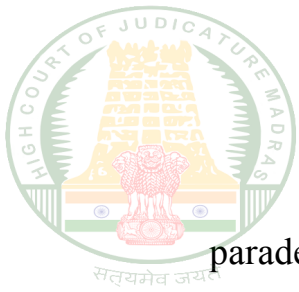
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chest. They then stole the cell phone, Andhra Bank passbook, I.D card cum LLR and a purse containing Rs.5,000/- from the deceased, who died on the spot.

5. On completion of the investigation, Ramakrishnan, Circle Inspector (P.W.16) filed the final report, charging A2 of having committed the offence under Sections 392 IPC, 392 IPC read with 397 IPC and 302 IPC read with 109 IPC read with 34 IPC.

6. In order to substantiate the case before the Trial Court, the prosecution had examined 16 witnesses P.W.1 to P.W.16 and marked 23 documents as Ext.P1 to Ext.P23, apart from 17 material objects as M.O.1 to M.O.17. On the side of the defence, no witnesses or documents were marked. On the strength of the evidences before it, the Trial Court had convicted A1 to A3 and sentenced A2 to imprisonment as stated above.

7.1 Ms.J.Jasmine Cina, learned counsel appearing for A2, submitted that the prosecution had examined Radhakrishnan (P.W.2) as an eye witness. Since he was only a chance witness, a test identification



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parade (T.I.P) was conducted before the learned Judicial Magistrate, in which three witnesses were produced to identify the three accused.

According to the learned counsel, out of the three prosecution witnesses, namely Radhakrishnan (P.W.2), Ravi and Chandran, only P.W.2 was examined by the prosecution during trial. However, P.W.2 did not identify A2 in the T.I.P, and since the other two witnesses namely Ravi and Chandran, were not examined, the prosecution has miserably failed to fix the culpability on A2. On that sole ground, the judgement of the Trial Court, requires to be set aside.

7.2 The learned counsel further submitted that the weapons alleged to have been used by A1, along with all other material objects, except the three C.Ds, were recovered only from A1. Since there was no substantive recovery from A2, she sought for his acquittal. The learned counsel also pointed out that the Trial Court had erroneously placed reliance on P.W.9, the learned Judicial Magistrate No.2, Tiruppur, who witnessed the T.I.P, particularly when Ravi, the original witness who had identified A2, was not examined, and P.W.2 had also not identified A2. Therefore, she prayed that the appeal be allowed.



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8. Per contra, learned Additional Public Prosecutor submitted that based on the test identification parade conducted, CDs belonging to the deceased were recovered from A2 and in view of this recovery of fact, the Trial Court had rightly convicted A2. It is also his submission that among the three eye witnesses, two of them namely Ravi and Chandran had died before trial, in which Ravi had rightly identified A2 in the presence of P.W.9. Since P.W.9 had spoken about the identification of A2 in the T.I.P by Ravi, his guilt was rightly recorded by the Trial Court and hence, he sought for dismissal of this appeal.

9. We have given our careful consideration to the submissions made by the respective counsels.

10.1 Before the Trial Court, Seshagiri (P.W.1), the elder brother of the deceased, was examined. According to him, on 09.05.2005, at about 08.00 p.m., the deceased had informed him over the phone that he was returning home. Since the deceased had neither reached home till about 10.30 p.m., nor answered his calls, P.W.1 contacted Saravanan (P.W.3)



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and enquired. On the morning of 10.05.2005, he once again called P.W.3,

who informed him that his calls to the deceased also went unanswered.

Thereafter, at about 09.00 a.m., P.W.1 came to know about the murder of his brother near Kongunagar Railway Gate and lodged a complaint (Ext.P1) to the police. The purse, passport size photo, identity card and LLR were marked through him as M.O1 to M.O4.

10.2 P.W.3 and Prakash (P.W.6) are the partners of the deceased in an advertising agency. P.W.3 deposed about the phone calls made by P.W.1 and also about his own calls to the deceased, which went unanswered. Thereafter, on receiving the information from P.W.1 regarding the murder, he went to the spot and saw the body.

10.3 P.W.6 is the other partner, who was only a hearsay witness with respect to the incident. However, he deposed that P.W.3 had called him at about 11.00 p.m. and enquired about the deceased.

10.4 Hanumantha Rao (P.W.4), the brother-in-law of the deceased, is a witness who came to know about the incident, only after the body



was found.

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10.5 Sivaraj (P.W.7) is the bus conductor, who was treated as a hostile witness for the prosecution.

10.6 Murali (P.W.8) is another elder brother of the deceased, who is also a hearsay witness about the incident.

10.7 The key witness examined before the Trial Court is Radhakrishnan (P.W.2), who was projected as an eye witness to the occurrence. According to his oral testimony, while he was walking on a bridge on 09.05.2005 at about 11.00 p.m., he saw the deceased speaking on the phone and walking about 100 feet ahead of him. At that time, three persons came on a bike from the opposite direction, and one of them snatched the cell phone of the deceased. When they demanded the bag of the deceased, he resisted, at which point, two of them held him while the third stabbed him twice. They then fled from the scene. On 31.05.2005, at the request of the police, P.W.2 had identified two of the accused in the T.I.P, but could not identify the third person. While the



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knife used in the incident was marked as M.O.5 through him, the two wheeler and bag were marked as M.O.6 and M.O.7 respectively.

10.8 P.W.9 is the Judicial Magistrate No.II, Tiruppur, who had witnessed the T.I.P conducted on 31.05.2005 at about 03.30 p.m at Coimbatore Central Prison. In her testimony, she had deposed about the test identification proceedings conducted by her. Initially, she had positioned about 27 suspects, along with A1 to A3 and subjected them for identification by P.W.2 and two other witnesses namely Ravi and Chandran.

10.9 During the first round of identification, P.W.2 had identified A1 and A3 alone, but could not identify A2. Thereafter, when the second witness, Ravi was asked to identify the persons involved in the occurrence, he had rightly identified A1, A2 and A3. When the third witness, Chandran was called upon to identify the accused, he had identified A1 and A3 but had wrongly pointed out one suspect, Vanjimuthu, as the third person.



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10.10 During the second round of T.I.P, the Judicial Magistrate had rearranged the positions, dresses and places of the 27 suspects and again asked the three witnesses to identify them. On this occasion, P.W.2 had identified A1 and A3 but could not identify A2. The second witness, Ravi, had identified all the three accused. The third witness, Chandran, could identify only A1 and A3 but pointed out another suspect, Kannan, as the third person involved in the crime.

10.11 In this background, the Judicial Magistrate conducted a third and last round of T.I.P by once again rearranging their positions and dresses. Even this time, P.W.2 identified A1 and A3 but could not identify A2. Ravi once again identified all the three, while Chandran identified A1 and A3 and wrongly pointed out to one Vanjimuthu as the third accused.

10.12 P.W.11 is the Head Constable, who had accompanied the body of the deceased to the hospital for post-mortem, while P.W.10 is the doctor, who had conducted the post-mortem. According to P.W.10, he found the following injuries on the body of the deceased:



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(i) A stab wound on the left side of the chest below the left nipple 2 cm x 3 cm deep in the thoracic cavity with right angle triangular shape and incised edges on the two sides and Lineation on the medial side. In the 3rd inter costal space in the Mid Clavicular line;

(ii) Small intestines protruding out of the abdominal wound on the left side of the abdomen at the level of the umbilicus;

(iii) Lacerated injury on the center of the scalp above the fore head 2 x ½ x bond deep.

10.13 The Head Constable who had sent the blood samples for forensic analysis was examined as P.W.12.

10.14 The Sub Inspector of Police, who had registered the First Information Report (Ext.P.8), was examined as P.W.13.

10.15 P.W.14, the Village Administrative Officer, was a witness to the confession statement (Ext.P9) of the accused, the admissible portion of which was marked as Ext.P10. Based on the confession statement, the police had recovered the knife and shirt from A1 through a recovery



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10.16 P.W.15, the Circle Inspector, conducted the major part of the investigation. According to him, as soon as he received the F.I.R in this case, he had gone to the scene of crime (SoC) and prepared the rough sketch (Ext.P15). He then sent the body for post-mortem with a requisition (Ext.P16) through P.W.11. On receiving certain secret information, he had arrested A1 on the banks of Noyal river at about 5.30 a.m., on 18.05.2005. Based on the voluntary confession statement of A1, he had arrested A2 at 7.30 a.m, and his confession statement was recorded in the presence of P.W.14. Pursuant to A1's confession statement, the knife and blood stained shirt were recovered. Likewise, from the confession of A2, he had recovered three CDs. Similarly, he had arrested A3 at about 10.00 a.m., and based on his confession, he had recovered a Hero Honda motorcycle, Rs.900/-, LLR, I.D card, photographs and an Andhra Bank cheque book. The cash of Rs.900/- was



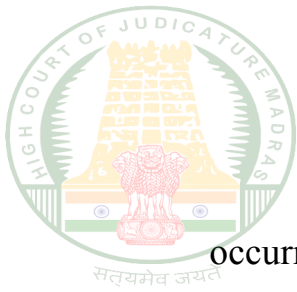
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marked as M.O.17. He then prepared the Alteration Report (Ext.P20), altering the offences by including Sections 302 and 379 IPC.

10.17 On 20.05.2005, P.W.15 gave a requisition to the learned Judicial Magistrate for conducting a T.I.P. Accordingly, on 31.05.2005, the T.I.P was conducted by the Judicial Magistrate (P.W.9), in which, the witnesses, P.W.2, Ravi and Chandran were produced. He then once again obtained the statements of these three witnesses, along with those of the other witnesses. Thereafter, he had sent the seized material objects to the Court under Form-95 (Ext.P21). The Chemical Analysis Report (Ext.P22) was sent directly to the Court by the Forensic Science Laboratory.

10.18 P.W.16 is the Circle Inspector, who had taken over the final part of the investigation and filed the final report.

11. The star witness of the prosecution is P.W.2, who is a chance witness and is claimed to have seen the occurrence. Admittedly, P.W.2 is a stranger to A1 to A3 and had first seen them only at the time of



occurrence at about 11.00 p.m., on 09.05.2005. He also deposed that the police summoned him to appear before the Central Jail on 31.05.2005, for identifying the three accused.

12. P.W.2 had categorically deposed that during the T.I.P, he could identify only two of the accused and admitted that he could not identify the third accused, namely A2 / appellant in this case.

13. P.W.9, before whom the T.I.P was conducted, also reiterates that P.W.2 could not identify A2 in all the three rounds of T.I.P. The T.I.P report prepared by P.W.9, which was marked as Ext.P6, has recorded the manner in which the parade was conducted. As per Ext.P6, 27 persons, including A1 to A3, all in the age group of around 25 to 30 years, were made to stand in a secluded room, while the three witnesses, including P.W.2, were placed in a separate video conferencing room. Three rounds of T.I.P were conducted, and during each rounds, the positions of the 27 suspects and their dresses were changed and the three witnesses were asked to identify them through video conferencing.



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14. We are satisfied with the manner in which the T.I.P was conducted by P.W.9. However, the outcome of the T.I.P, insofar as it relates to A2, was not much in favour of the prosecution. Among the three witnesses, Ravi and Chandran had died prior to the trial, and therefore, they could not be examined by the prosecution. With regard to the identification of A2, both P.W.2 and P.W.9 had clearly deposed that A2 was not identified by P.W.2 during T.I.P, and their statements were corroborated through Ext.P6. The Trial Court, however, had recorded that A2 was properly identified during the course of T.I.P on the ground that one of the witnesses, Ravi, had identified A2 as one of the persons who had committed the crime in the presence of P.W.9. Since P.W.9 had also spoken about the identification made by the late witness Ravi, the Trial Court had fixed the culpability on A2 as well.

15. We do not endorse the reasoning adopted by the Trial Court. The entire case against A2 rests on his identification, which is founded solely on the T.I.P. T.I.Ps are essentially statements made to the police and are governed by Section 162 of Cr.P.C. The identity of the accused, however, is a relevant fact to be established under Section 9 of the Indian Evidence Act. It has been consistently held by the Constitutional Courts



that a T.I.P, as such, is not a substantive piece of evidence, but it is conducted only for the satisfaction of the prosecution that the investigation is proceeding in the right direction.

16. In *Ram Nath Mahto vs. State of Bihar*, reported in [AIR 1996 SC 2511], the Hon'ble Supreme Court had held that a T.I.P is not substantive evidence, whereas the evidence given in Court is substantive evidence. Similarly, in *Budhsen and another vs. State of Uttar Pradesh*, reported in [(1970) 2 SCC 128], the Court emphasised the importance of a T.I.P witness to subsequently testify before the Court during trial, which was highlighted in the following manner:

“7.

..... *Now facts which establish the identity of an accused person are relevant under Section 9 of the Indian Evidence Act. As a general rule, the substantive evidence of a witness is a statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular*



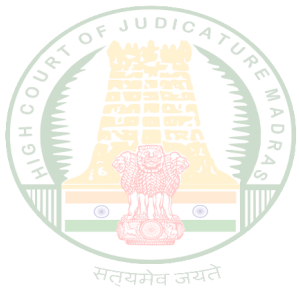
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accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding.”

17. Admittedly, P.W.2 had not identified A2 during the T.I.P. On the other hand, the second witness, Ravi, had identified A2, as well as the other two accused, during the three rounds of the T.I.P. However, the third witness, Chandran, had misidentified two other trial prisoners as the third person in the SoC, after he had identified A1 and A3. The second witness, Ravi could not be examined by the prosecution during the trial, since he had expired. Likewise, the third witness, Chandran had also expired and, therefore, was not examined. Thus, the evidence of P.W.2 is of no avail to the prosecution, since he had not pointed fingers at A2.

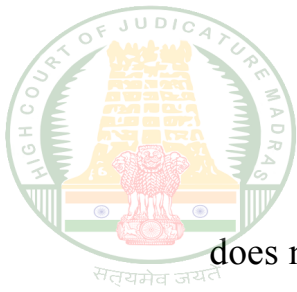


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18. This leaves us only with the evidence of P.W.9, before whom the T.I.P was conducted and who spoke about the second witness, Ravi of having identified A2. This is the sole piece of evidence available before the Trial Court in order to fix the culpability of the crime on A2. As already pointed out in the preceding portions of this judgement, a T.I.P, as such, is not a substantive piece of evidence. Furthermore, when the witnesses, who allegedly had identified A2, could not be examined, the Trial Court had no opportunity to observe his demeanour. Above all, the defence was deprived of the opportunity to cross examine such a witness to clarify as to how and under what circumstances he was able to pinpoint A2 during the T.I.P, as a person who had committed the crime.

19. In this background, the only evidence of P.W.9 that she had witnessed Ravi identifying A2, would not carry much of an evidentiary value. More so, when P.W.9 is the only solitary witness to Ravi's statement, it would be highly unsafe to place reliance on the same, to fasten culpability upon A2.

20. Thus, the contrary findings of the trial Court on this aspect

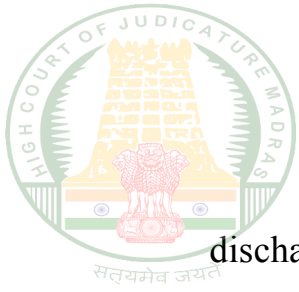


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does not inspire our confidence so as to find A2 of having participated in the occurrence.

21. To further strengthen his case, the learned counsel for the appellant /A2 submitted that the major recovery was only from A1 and A3, which included the weapons, a blood stained shirt, a two wheeler, photographs, I.D cards, a purse and cash. In contrast, the alleged recovery from A2 were only three C.Ds. With merely two pieces of evidence, namely the testimony of P.W.9 and the recovery of CDs from A2, neither of which is not substantive by itself, it would not be highly unsafe to approve the findings of the Trial Court, holding A2 of being guilty of the offence.

22. For all the foregoing reasons, the impugned judgement of the Trial Court made in Sessions Case No.38 of 2018 dated 12.09.2019 is set aside. Consequently, the appellant / A2 is acquitted of all the charges and is directed to be released forthwith, unless his confinement is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded and the bail bond, if any, executed shall stand



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discharged.

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23. Accordingly, this Criminal Appeal stands allowed.

[M.S.R., J] [V.L.N., J]

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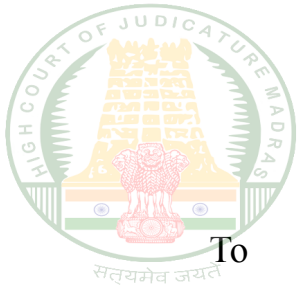
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes/No

Neutral Citation: Yes/No

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To

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- 1.The Inspector of Police,
Tiruppur North Police Station,
Tiruppur District
- 2.The Principal District and Sessions Judge, Tiruppur
- 3.The Superintendent of Prison,
Central Prison, Coimbatore
- 4.The Public Prosecutor,
High Court, Madras.

M.S.RAMESH, J.
and



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V.LAKSHMINARAYANAN, J.

Anu

Pre-delivery order in
Crl.A.No.766 of 2019

02. 09.2025