



Crl.A.Nos.57 and 148 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2025

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.Nos.57 and 148 of 2023

Crl.A.No.57 of 2023:-

Silambarasan

... Appellant

Vs

The State Rep By Its,
The Inspector of Police,
Dharmapuri Police Station,
Dharmapuri District.
Cr.No.346 of 2019.

...Respondent

PRAYER : Criminal Appeal has been filed under Section 374(2) of Code of Criminal Procedure, to set aside the judgment and conviction dated 27.09.2022 by the Additional District and Session Judge, Dharmapuri passed in SC No.2 of 2021 convicting him for offence punishable under Section 392 of IPC to undergo rigorous imprisonment for 7 years and pay fine of Rs.4000/- in default to undergo simple imprisonment for the period of 3 months and may be pleased to acquit the appellant/sole accused from the charges.

For Appellant : Mr.M.Mohamed Riyaz

For Respondent : Mr.S.Raja Kumar

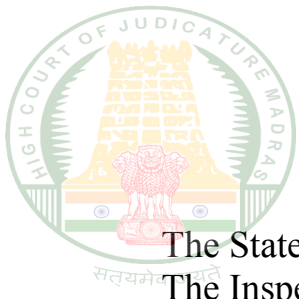
Additional Public Prosecutor

Crl.A.No.148 of 2023:-

Vinoth

... Appellant

Vs



Crl.A.Nos.57 and 148 of 2023

The State Rep By Its,
The Inspector of Police,
Dharmapuri Police Station,
Dharmapuri District.
Cr.No.346 of 2019.

...Respondent

PRAYER : Criminal Appeal has been filed under Section 374(2) of Code of Criminal Procedure, to set aside the Judgment passed in S.C.No.2 of 2021 dated 27.09.2022 on the file of the Additional District and Sessions Court, Dharmapuri.

COMMON JUDGMENT

These Criminal Appeals have been filed as against the Judgment passed in S.C.No.2 of 2021 dated 27.09.2022 by the Additional District and Sessions Court, Dharmapuri, thereby convicting the appellants for the offences punishable under Sections 392 read with Section 397 of IPC.

2. The case of the prosecution is that, on 07.06.2019, at about 11.45 p.m., when the complainant was waiting for a bus near Pennagaram four road, at Dharmapuri, to return to his native place viz., Indur, the accused came there on a two-wheeler and offered to drop the defacto complainant at his native place. When the complainant refused, the accused persuaded him to sit on their bike and took him to a newly constructed house situated on the service road of Pennagaram flyover. Thereafter, they put him under fear of death and committed robbery of a gold chain, a ring, an I pad and cash of Rs.6000/- from

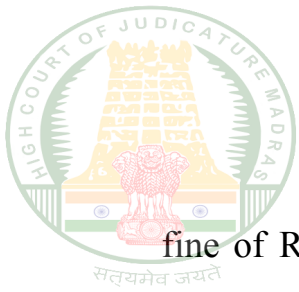


Crl.A.Nos.57 and 148 of 2023

the defacto complainant. Thereafter, they also threatened him to withdraw money from SBI ATM using his debit card and robbed a sum of Rs.10,000/- from the ATM. It is further alleged that he was once again taken to the Lakshmi Vilas Bank ATM to withdraw more money, where there was no cash available and thereafter, they pushed him from the bike and flew away from the scene of occurrence. Hence, the complaint.

3. On receipt of the complaint, the respondent registered FIR in Crime No.346 of 2019, for the offences punishable under Sections 394 and 397 of IPC. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court in S.C.No.2 of 2021 for the offences punishable under Sections 392 read with Section 397 of IPC.

4. In order to bring home the charges, the prosecution had examined PWs.1 to 12 and marked Exs.P1 to 18. The prosecution also produced material objects which were marked as M.Os.1 to 5. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidence, the Trial Court found the accused guilty for the offence punishable under Section 392 read with Section 397 of IPC and the first accused (A1) was sentenced to undergo 8 years rigorous imprisonment and also to pay a



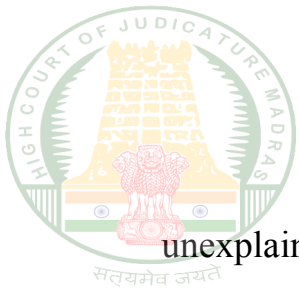
Crl.A.Nos.57 and 148 of 2023

fine of Rs.5000/-, in default, to undergo three months rigorous imprisonment.

WEB COPY

The second accused (A2) was sentenced to undergo 7 years rigorous imprisonment and also to pay a fine of Rs.4000/-, in default, to undergo three months rigorous imprisonment. Aggrieved by the same, the present appeals.

5. The learned counsel for the appellants would submit that the prosecution failed to prove the charges beyond any reasonable doubt and as such, the benefit of doubt goes in favour of the accused and they are entitled for acquittal. There were material contradictions in the deposition of PW.1. The prosecution also failed to prove that the defacto complainant had come from Bangalore and was waiting for bus to reach his native at Dharmapuri. Though the complainant sustained injuries and had allegedly taken treatment, the prosecution failed to examine any Doctor or produce any material evidence to prove that the complainant had undergone treatment at the Government Hospital, Dharmapuri. Even according to the case of the prosecution, the complainant did not know the identity of the accused. The complainant identified them only at the Police Station. The respondent failed to conduct any Test Identification Parade. It is further submitted that the respondent recovered the cash and other articles, allegedly robbed from the complainant even before recording the confession statement of the accused. There was also an



Crl.A.Nos.57 and 148 of 2023

unexplained delay of two days in producing the material objects, which were allegedly robbed by the appellants before the Trial Court. Even according to the prosecution, the alleged recovery was made from the appellants en-route to the Police Station, that too before recording their confession statement. The prosecution also failed to recover the two-wheeler allegedly used in the commission of the crime. Therefore, the prosecution failed to bring the charges to home and even then, the Trial Court mechanically convicted the appellants.

6. Per contra, the learned Additional Public Prosecutor appearing for the respondent Police would submit that minor contradictions and discrepancies in the prosecution witnesses would not be fatal to the case of the prosecution. The minor contradictions can be ignored when the prosecution has categorically proved the commission of robbery by the accused. The appellants were identified by the complainant as well as by another eye witness who was examined as PW.2. Pursuant to the crime, there was recovery of a gold ring, a gold chain and cash of Rs.6000/- from the accused. Therefore, the Trial Court had rightly convicted the appellants and it does not warrant any interference by this Court.

7. Heard the learned counsel on either side and perused the materials



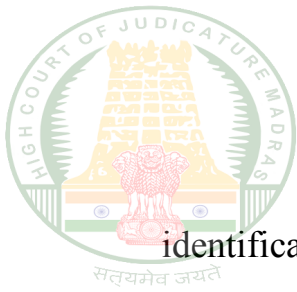
Crl.A.Nos.57 and 148 of 2023

available on record.

WEB COPY

8. The complainant was examined as PW.1. There are three accused, in which the third accused is a Juvenile. The appellants are arrayed as A1 and A2. All the three accused came on a motorcycle, took the complainant to a remote area and robbed him of his gold chain, gold ring, I Pad and a sum of Rs.6000/-. Thereafter, he was allegedly dragged to ATM and compelled to withdraw a sum of Rs.10,000/- through his ATM card. Subsequently, he was taken to the Lakshmi Vilas Bank ATM, where there was no cash available and as such, they left the complainant and flew away from the scene of occurrence. On the date of the alleged occurrence, the complainant did not lodge any complaint, but instead went to his native place. The next day, he went to the Government Hospital, Dharmapuri at about 07.30 a.m and thereafter, he went to the respondent's Police Station. It was only then informed that the accused were arrested and also made recovery of the stolen items. In order to identify them, the complainant was called to the Police Station, where he identified them in the Police Station. The next day, they also published their photographs in the news paper even before any formal by the complainant that too in the Police Station.

9. Therefore, it is evident that the respondent failed to conduct any



Crl.A.Nos.57 and 148 of 2023

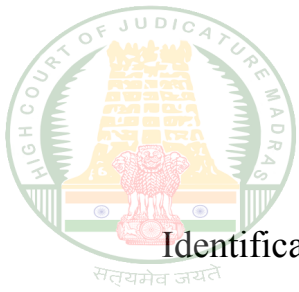
identification parade in the manner known law. In fact, the photographs of the appellants were published in the news paper prior to the complainant identifying them, which further vitiates the process of identification.

10. In this regard, the learned counsel for the appellant relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2024 LiveLaw (SC) 238** in the case of **Jafar Vs State of Kerala**, in which the Hon'ble Supreme Court of India held as follows:-

“ 6. Anil Kumar (PW-8), who is the Investigating Officer (IO), has also admitted that PW-1 identified the accused persons by seeing them at the police station. He has further admitted that no identification parade was conducted. As such, it can be seen that the identification of the appellant herein by PW- 1 is quite doubtful as no identification parade has been conducted. PW-1 clearly states that he has identified the accused persons since the police had shown him those two people.

7. In the absence of proper identification parade being conducted, the identification for the first time in the Court cannot be said to be free from doubt. We find that the other circumstance that the Courts relied for resting the order of conviction is with regard to the recovery of an iron rod. An iron rod is an article which could be found anywhere. It is not the case of the prosecution that any stolen article was recovered from the appellant herein.”

11. Thus, when there was no Identification Parade conducted by the respondent in accordance with law, identifying the appellants that too in the Police Station, created doubt over the case of the prosecution. If no



Crl.A.Nos.57 and 148 of 2023

Identification Parade of the unknown accused took place, their identification in

WEB COPY the Police Station cause serious doubt on the veracity of the prosecution's case.

Further, though the complainant went to Government Hospital, Dharmapuri, the prosecution failed to examine any Doctor and did not produce any documentary evidence to show that the complainant was treated for the injury sustained by him during the course of the alleged robbery. It is fatal to the case of the prosecution and failed to prove the alleged robbery.

12. Insofar as the recovery of material objects 1 to 4 are concerned, even according to the case of the prosecution, the respondent recovered the same from the accused, en-route to the Police Station. After bringing the accused to the Police Station that too after recovery, their confession statements were recorded in the Police Station. It is evident from the testimony of the Mahazer witness, the Village Administrative Officer, who was examined as PW.6 for the arrest and recovery. He categorically deposed that one of the accused was an Auto Driver, who used to commit robberies using a pen knife. At the place of arrest itself, the material objects were allegedly recovered from the accused. Thereafter, the accused were taken to the Police Station and recorded their confession statement. Further they also recovered the motorcycle which was used by the accused during the alleged robbery. However, the



Crl.A.Nos.57 and 148 of 2023

prosecution failed to produce the motorcycle before the Trial Court, instead only photographs of the motorcycle were produced as M.O.6 before the Trial Court.

13. In this regard, the learned counsel for the appellants relied upon the Judgment of the Supreme Court of India reported in **2022 1 SCC 92** in the case of ***Bijender Alias Mandar Vs State of Haryana***, wherein it was held as follows:-

16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery.

17. Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the Court ought to stretch the benefit of doubt to the accused. Its nearly three centuries old cardinal principle of criminal jurisprudence that “it is better that ten guilty persons escape, than that one innocent suffer”. The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds



Crl.A.Nos.57 and 148 of 2023

its fort on the premise that “the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent”.

Thus, it is clear that in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt.

14. In the case on hand, admittedly, the recovery was made even before their confession statement and also en-route to the Police Station. It is also evident from the evidence of PW.7, who is also witness of the Mahazer, recovery and arrest. He also categorically deposed that when the accused were arrested, there was recovery of material objects and thereafter, they proceeded to the Police Station. Therefore, the way in which the recovery was made is doubtful and the prosecution failed to inspire confidence in the manner of recovery with regard to his nexus to the alleged offences. Therefore, the benefit of doubt goes in favour of the accused.

15. In this regard, the learned counsel for the appellants relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2024 SCC online SC 3531** in the case of **Suresh Chandra Tiwari and Another Vs State of Uttarakhand**, wherein it was held as follows:-

“ 37. Otherwise also, the disclosure statement (Exb. Ka-18) was not admissible in evidence because the alleged discovery was not



Crl.A.Nos.57 and 148 of 2023

WEB COPY

made pursuant to that statement. Disclosure statement was recorded at the police station whereas recovery was made from the place pointed out by the accused enroute to the police station. It was, therefore, a case of recovery from the place allegedly pointed out by the accused and not based on a disclosure statement. In Geejaganda Somaiah vs. State of Karnataka¹¹, this Court has cautioned the courts about misuse of provision of Section 27 of the Evidence Act, 1872 while observing as under:

“22. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of the accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of section 27 of the Evidence Act.”

16. Therefore, the prosecution failed to establish the chain of incriminating circumstances and as such, the appellants are entitled to be acquitted of all the charges. Furthermore, the prosecution also failed to produce any material to show that the complainant was compelled and threatened to withdraw a sum of Rs.10,000/- from SBI ATM by producing any statement of accounts of the complainant's bank, CCTV footages or any electronic evidence corroborating such withdrawal.

17. In criminal jurisprudence, the burden is always on the prosecution



Crl.A.Nos.57 and 148 of 2023

to prove its case beyond reasonable doubt. When two views are possible and the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present case, the prosecution has failed to discharge its burden convincingly, and the trial Court failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and sentence awarded by the trial Court cannot be sustained and is liable to be set aside.

18. Accordingly, the Judgment passed in S.C.No.2 of 2021 dated 27.09.2022 by the Additional District and Sessions Court, Dharmapuri, is hereby set aside. The appellants are acquitted from all charges in Special S.C.No.2 of 2021 for the offences under Sections 392 read with Section 397 of IPC. The appellants are directed to be set at liberty forthwith unless their custody is otherwise required in connection with any other case. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed by the appellants shall stand cancelled.

19. In the result, this Criminal Appeals are allowed.

31.07.2025



Crl.A.Nos.57 and 148 of 2023

Speaking order/Non-speaking order

Index : Yes/No

Internet : Yes/No

mn

G.K.ILANTHIRAIYAN, J.

mn

To

1. The Additional District and Sessions Court, Dharmapuri.
2. The Inspector of Police,
Dharmapuri Police Station,
Dharmapuri District.
3. The Superintendent of Prison,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court, Madras.

Crl.A.Nos.57 and 148 of 2023



WEB COPY



Crl.A.Nos.57 and 148 of 2023

31.07.2025