



*CRL.A(MD).No.349 of 2024*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**RESERVED ON : 06.10.2025**

**PRONOUNCED ON : 31.10.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**CRL.A(MD).No.349 of 2024  
and  
Crl.M.P.(MD)No.12330 of 2025**

**Kannan @ Gundu Kannan : Appellant / Accused No.1**

**Vs.**

**The State represented by  
The Inspector of Police,  
Panagudi Police Station,  
Tirunelveli District.  
(Crime No.466 of 2008)**

**: Respondent / complainant**

**PRAYER:- Criminal Appeal filed under Section 374 Cr.P.C., to call for the entire records pertaining to the judgment rendered by the learned Assistant Sessions Judge, Valliyoor, Tirunelveli District in S.C.No.353 of 2013, dated 25.08.2023 and set aside the same.**

**For Appellant : Mr.C.M.Arumugam**

**For Respondent : Mr.Thanga Aravindh  
Government Advocate (Crl.Side)**



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## **JUDGMENT**

The Criminal Appeal is directed against the judgment of conviction made in S.C.No.353 of 2013, dated 25.08.2023, on the file of the Assistant Sessions Judge, Valliyoor.

2. The appellant is the first accused in S.C.No.353 of 2013, facing charges under Sections 454 and 397 I.P.C., on the file of the Assistant Sessions Court, Valliyoor.

3. The case of the prosecution is that on 21.12.2008 at around 13.40 hours, while the accused 2 and 3 watched from Mudukku Theru, west of Cinema Theatre, the first accused trespassed into the house of the complainant – Thamarai Selvi, residing in Panakudi Mela Azad street and pushed her down, gagged her with clothes and attacked her with an Aruval, causing grievous injuries on her chin. The first accused also snatched a one-sovereign gold chain from her. The accused have allegedly committed the offences punishable under Sections 454, 397 and 34 I.P.C.



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4. The learned Judicial Magistrate, Valliyoor has taken the charge sheet on file in P.R.C.No.47 of 2009 and furnished the copies of records under Section 207 Cr.P.C., on free of costs. The learned Magistrate finding that the offence under Section 397 I.P.C., is exclusively triable by the Court of Sessions, after compliance under Sections 208 and 209 Cr.P.c., had committed the case to the file of the Principal District and Sessions Court, Tirunelveli and the same was taken on file in S.C.No.353 of 2013 and thereafter the case was made over to the Assistant Sessions Court, Valliyoor.

5. After appearance of the accused, the learned Assistant Sessions Judge, on hearing both sides and on perusal of records, being satisfied that there existed a prima facie case against the accused, framed charges under Sections 454 and 397 I.P.C., against the first accused and under Sections 454 r/w 34 I.P.C., as against the third accused Kumaravel and the same were read over and explained to them and on being questioned, they denied the charges and pleaded not guilty. Since the second accused Kannan died on 11.01.2020, the case as against him was ordered to be abated.



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6. The prosecution, to prove its case, examined 8 witnesses as P.W.1 to P.W.8, exhibited 8 documents as Exs.P.1 to P.8 and marked 2 material objects as M.O.1 and M.O.2.

7. The case of the prosecution emerging from the evidence adduced on their side, in brief is as follows:

(a) P.W.1 – Thamarai Selvai – defacto complainant is the wife of P.W.2 – Prabhakaran and are residing in a tenanted premise at Panagudi. P.W.1 is a home maker. On 21.12.2008, P.W.2 went to Nanguneri to attend their association meeting. P.W.1 was in her house along with her five months old baby. When P.W.1 was cooking, at about around 1.00p.m., a person wearing a T-shirt and lungi approached her and enquired about the occupants of P.W.1's house previously. P.W.1 replied that they were residing at Anna nagar. At that time, that person requested water and also a pen to note down the address. As the pen was not working, he requested for another.. When P.W.1 turned to get another pen, the said person entered and pushed her down, gagging her with clothes to prevent her from shouting. When P.W.1 started shouting, he attacked her with an Aruval on her right chin and snatched the gold chain from her neck.



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(b) Due to heavy bleeding and giddiness, P.W.1 lay there for some time, before managing to reach P.W.3's house and inform them about the incident. P.W.3 Immediately took P.W.1 to a nearby Iyer Hospital, but they refused to admit her citing it was a police case. Thereafter, P.W.1 was taken to Thiraviyam Hospital where initial treatment was given, but they asked her to wait outside again stating it was a police case. After receiving necessary instructions from the police, P.W.1 underwent surgery.

(c) When P.W.7 – Dr. Ramesh, was on duty in Thiraviyam Hospital, Nagercoil on 21.12.2008, P.W.1 was admitted for her injuries. Upon examining her, P.W.7 noticed the following injuries:

*“1.Contusion right upper and lower eyelids with an abrasion over upper eyelid 0.25x0.5cm. Sub conjunctival haemorrhage.  
2.Oblique incised wound 15x2x2cm extending from front of tragus of right pinna to middle of chin exposing underlying soft tissues. Active bleeding present. Right facial nerve injury.  
3.Laceration right index finger 2x0.5x0.5cm terminal phalanx level.”*

After treatment, P.W.1 was discharged from the hospital on 29.12.2008 and P.W.7 gave a wound certificate under Ex.P.4 certifying that injuries suffered by P.W.1 are of grievous in nature.



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(d) P.W.6, the then Head Constable attached to Panagudi Police Station, received an information from the Thiraviyam Hospital, Nagercoil at about 16.30 hours on 12.08.2008 and immediately went to that hospital and recorded a statement from P.W.1 who was taking in-patient treatment, under Ex.P.1. On the basis of the said statement, he registered a case in Cr.No.466 of 2008 under Sections 454 and 397 I.P.C., and prepared F.I.R., under Ex.P.3 and sent the original complaint statement and F.I.R., to the jurisdictional Court and copies to the higher police officials.

(e) Thiru.P.Kanagaraj was working as Inspector of Police in Panagudi Police Station at that time. He took up the investigation and went to the occurrence spot at about 09.00p.m., and prepared the observation mahazar under Ex.P.2 in the presence of P.W.4 – Anandharaj and one Manimaran and drew a rough sketch under Ex.P.5. The said Inspector of Police has then examined the witnesses and recorded their statements. He examined P.W.7 – Medical Officer, obtained the wound certificate and recorded his statement.



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(f) P.W.8 – the then Inspector of Police attached to Ervadi Police Station was conducting vehicle surveillance on 13.03.2009. When the three accused in the present case were travelling on a two wheeler bearing Registration No.TN-72-AJ 3319 on the Ervadi – Valliyoor road, they were intercepted on suspicion and during the enquiry, they gave a voluntary confession statement in the presence of P.W.5 – Samuthira Pandi and one Thiraviyam Nadar. P.W.8 recorded the confession statement of the first accused, wherein the first accused was alleged to have stated that if he is taken to poultry shed, he would take and hand over the gold chain and weapon and in pursuance of the admitted portion of the confession statement under Ex.P.6, the first accused was taken to the poultry shed at about 10.30 hours. The accused had taken out and produced one sovereign gold chain and Aruval and the same were seized in the presence of the same witnesses under the covery of seizure mahazar-Ex.P.7.

(g) P.W.8, on coming to know that the incident stated by the first accused lies within the jurisdiction of Panagudi Police, informed Thiru.Kanagaraj, the then Inspector of Police and handed over the properties and seizure mahazar. The said Kanagaraj received the case properties and M.O.1 – gold chain and M.O.2 – Aruval and sent them to



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the Court through Form -95 under Ex.P.8. Thereafter he arrested the first accused formally and subjected him to remand. Thereafter, the said Kanagaraj examined Thiraviyam Nadar and Samuthira Pandi and recorded their statements. Since the said Kanagaraj died before his examination, P.W.6 – the then Head Constable has given evidence about the investigation conducted by the said Kanagaraj. With the examination of P.W.8, the prosecution has closed their side evidence.

(h) When the accused were examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating aspects found against them in the evidence adduced by the prosecution, they denied the same as false and further stated that a false case has been foisted against them. Though the accused have further stated that they are having defence evidence, subsequently, they have not let in any evidence.

8. The learned Sessions Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned judgment dated 25.08.2023, convicting the first accused for the offence under Section 454 I.P.C., and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.500/- and for the

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offence under Section 397 I.P.C., sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo 3 months Simple Imprisonment. The learned Judge, finding that the third accused is not guilty under Sections 454 and 397 I.P.C., acquitted him under Section 235(1) Cr.P.C. Challenging the judgment of conviction and sentence, the first accused has preferred the present Criminal Appeal.

9. Heard the learned Counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the State and perused the materials available on record.

10. Whether the impugned judgment dated 25.08.2023 made in S.C.No.353 of 2013, on the file of the Assistant Sessions Court, Valliyoor, is liable to be set aside ?, is the point for consideration.

11. The learned Counsel for the appellant/first accused would submit that P.W.1, who has been projected as the only witness to see the occurrence, has not stated anything about the appellant, that P.W.1 has failed to identify the first accused before the trial Court and that in the absence of any Test Identification Parade conducted during the

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investigation, the learned trial Judge, without considering the above material aspects, has proceeded to convict the accused erroneously. The learned Counsel would further submit that the prosecution case is solely based upon the extra-judicial confession marked under Ex.P.6, but the same is neither reliable nor has been recorded in accordance with law, that the prosecution failed to examine the Investigating Officer and thereby deprived an opportunity to cross-examine the Investigating Officer with regard to the defective investigation and that the prosecution has miserably failed to prove the arrest, recording of confession and recovery of properties in the manner known to law. He would further submit that there are material contradictions and inherent improbabilities in the evidence of prosecution witnesses and there are serious contradictions in the medical evidence of the prosecution in respect of injuries allegedly sustained by P.W.1 and that since there are lot of defects in the investigation and in the absence of any reason or explanation, the trial Court has committed a grave error in accepting the case of the prosecution and in convicting the appellant.

12. The learned Government Advocate (Crl.Side) would submit that P.W.1 – defacto complainant has given cogent and elaborate evidence

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about the occurrence, sustaining of cut injury and robbing of gold chain and the same came to be corroborated by the evidence of P.W.3. He would further submit that the prosecution through the evidence of P.W.8 and through the documents under Exs.P.6 to P.8 and the consequent recovery of M.O.1 and M.O.2 case properties, has proved the factum of arrest, recording of confession and the consequent recovery of M.O.1 – gold chain and M.O.2 – weapon and that since there is a direct evidence, the non-examination of mahazar witnesses or that the said witnesses are not supporting the case of the prosecution does not affect the case of the prosecution, that the learned trial Judge, appreciating the prosecution evidence in proper perspective, has rightly found the first accused guilty for the offence under Sections 454 and 397 I.P.C., and that therefore, the impugned judgment of conviction is not liable to be interfered with.

13. It is the specific case of the prosecution that the first accused on 21.12.2008 at about 13.40 hours trespassed into the house of P.W.1, pushed her down, gagged her with clothes and attacked her with an Aruval on her right chin causing grievous injuries and snatched one sovereign gold chain from her neck. According to the prosecution, P.W.1 -defacto complainant is the sole eyewitness. It is not the case of the prosecution nor

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P.W.1's testimony that the accused was previously known to her, thus, he is admittedly a stranger. Notably, during her chief examination, P.W.1 was asked to identify the accused present in Court at that time, but she stated that the person was not present and the relevant portion is extracted hereunder:

“என்னிடம் சேமினை அறுத்த நபர் நேத ந்திமன்றத்தில் ஆஜர் ஸ்லை எனக்கு தெரியாது.”

14. Considering the above evidence, it is very much clear that P.W.1 has failed to identify the accused before the trial Court. It is pertinent to note that no Test Identification Parade was conducted during the investigation. The prosecution either before the trial Court or this Court has not provided any acceptable reason or explanation for this omission.

15. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in *P.Sasikumar Vs. the State represented by the Inspector of Police* in Crl.A.No.1473 of 2024, dated 08.07.2024 relied on by the learned Counsel for the appellant, wherein the scope and necessity



of Test Identification Parade was dealt with and the relevant passages are extracted hereunder:

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*“12. It is well settled that TIP is only a part of Police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence is only dock identification that is identification made by witness in Court during trial. This identification has been made in Court by PW-1 and PW-5. The High Court rightly dismisses the identification made by PW-1 for the reason that the appellant i.e., accused no.2 was a stranger to PW-1 and PW-1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW-1 made for the first time in the Court was not proper. However, the High Court has believed the testimony of PW-5 who has identified accused no.2 under similar circumstances! The appellant was also stranger to PW-5 and PW-5 had also seen the accused i.e., the present appellant for the first time on that fateful day i.e. on 13.11.2014 while he was wearing a green colour monkey cap. The only reason assigned for believing the testimony of PW-5 is that he is after all an independent witness and has no grudge to falsely implicate the appellant. This is the entire reasoning. We are afraid the High Court has gone completely wrong in believing the testimony of PW-5 as to the identification of the appellant. In cases where*



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*accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (See: Kunjumon v. State of Kerala (2012) 13 SCC 750).*

*13. After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused. The prosecution has not been able to prove the identity of the present appellant i.e. A-2 beyond a reasonable doubt. The relevance of a TIP, is well-settled. It depends on the fact of a case. In a given case, TIP may not be necessary. The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. It would all depend upon the facts of the case. It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in the case of Rajesh v. State of Haryana (2021) 1 SCC 118 and therefore TIP may not be necessary. It is the task of the investigation team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution as we are afraid it will be in the present case.*



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14. *The relevance of TIP has been explained by this Court in a number of cases (Please see: Ravi Kapur v. State of Rajasthan (2012) 9 SCC 2841 , Malkhansingh and Ors. v. State of Madhya Pradesh (2003) 5 SCC 7462 )*

15. *In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP which has not been done. The emphasis of TIP in a given case is of vital importance as has been shown by this Court in recent two cases of Jayan v. State of Kerala (2021) 20 SCC 38 and Amrik Singh v. State of Punjab (2022) 9 SCC 402. In Jayan (supra), this Court disbelieved the dock identification of the accused therein by a witness and while doing so, this Court discussed the aspect of TIP in the following words: “It is well settled that TI parade is a part of investigation and it is not a substantive evidence. The question of holding TI parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, TI parade may make the identification of the accused by the witness before the Court trustworthy....” (Para 18)*



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16. In the cited decision, the appellant, the second accused, was identified by P.W.1, the father of the deceased /complainant and P.W.5, a neighbour, while the accused was receiving treatment, after arrest. However, in the present case, P.W.1 to whom the accused was a stranger, did not identify the accused immediately after arrest or subsequently. Moreover, P.W.1 failed to identify the accused before the trial Court also. Admittedly, no Test Identification Parade was conducted during investigation. Given these circumstances, as rightly contended by the learned Counsel for the appellant/accused, P.W.1 – defacto complainant never identified the appellant/accused as the perpetrator. Therefore, the finding of the learned trial Judge that the non-conducting of the identification parade is not fatal to the case of the prosecution, considering the facts and circumstances of the case and taking note of the legal position above referred, cannot legally be sustained.

17. As rightly contended by the learned Counsel for the appellant, the learned trial Judge and now the learned Government Advocate (Crl.Side) place significant emphasis on the alleged recovery of M.O.1 – gold chain from the accused. It is the case of the prosecution that P.W.8, while conducting the vehicle surveillance, arrested the three accused



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including the appellant, recorded the confession statement given by the first accused and on the basis of the said confession, M.O.1 – gold chain and M.O.2 – weapon were allegedly recovered from P.W.1.

18. The learned trial Judge, in the impugned judgment has observed that since M.O.1 – gold chain was owned by P.W.1 and M.O.1- gold chain was not claimed by the accused so far and that M.O.1 – gold chain was recovered only from the said accused in pursuance of his confession, the prosecution has established the connection between the accused and the crime. At the outset, as rightly pointed out by the learned Counsel for the accused, P.W.1 in her evidence nowhere claimed any right or ownership for M.O.1 – gold chain. She would say that the chain shown to her came to be recovered by the police and on such identification, the chain came to be exhibited as M.O.1. Though the chain was allegedly recovered on 13.02.2009 and the same came to be remanded before the jurisdictional Court on 20.03.2009, P.W.1 has not claimed the return of M.O.1 – chain from the Court till now. During cross-examination, she would attempt to give an explanation that she was not aware of the procedure to get back the jewels.



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19. As rightly contended by the learned Counsel for the accused, P.W.1's financial situation and her failure to claim the gold chain from the concerned Court raises genuine doubts about the ownership of the jewel and also the case of the prosecution. Moreover, even P.W.1 herself admitted that she saw M.O.1 gold chain for the first time in Court which further weakens the prosecution case. She would say in her cross-examination

“சா.பொ.1 தனது சர்க்கிலியை நான் னேற்றைக்கு நீதிமன்றத்தில் தான் பார்க்கிறேன் என்றால் சரிதான். அதை அடையாளம் பார்க்க சொல்லி உட்கவவில்லை என்றால் சரிதான். வழக்கு சம்பந்தமாக உபாஸீசார் என்னை எத்தனை முறை விசாரித்தார்கள் என்றால் விசாரிக்கவில்லை.”

20. Considering the above, it is clearly evident that even after the alleged recovery, the same was not shown to P.W.1 and hence, the same was not identified by P.W.1. The prosecution has shown P.W.5- Samuthira Pandi and Thiraviya Nadar as witnesses to the arrest, confession and recovery. P.W.5 – Samuthira Pandi in his evidence would say that when he was proceeding to his home after completing his work, the police had taken his thumb impression and he does not know the purpose for which thumb impressions were taken. Since P.W.5 has not supported the case of



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the prosecution, he was treated as hostile and though he was subjected to cross-examination, nothing was elicited by the prosecution in their favour.

Despite the fact that P.W.5 had turned hostile, the prosecution has not chosen to examine the other witness viz., Thiraviya Nadar and they have not offered any reason or explanation for non-examining him. Undoubtedly, P.W.8, the Inspector of Police, who arrested the accused, recorded the confession and recovered the case properties, can be relied upon for proof of recovery, even if the mahazar witness do not support the prosecution's case.

21. The prosecution's case is that P.W.8 was unaware of the pending FIR in Cr.No.466 of 2008 when he arrested the accused and recovered M.O.1 and M.O.2. However, Ex.P.7, the seizure mahazar, specifically mentions the case particulars of the Panagudi Police Station, including the crime number and sections of law, which raises questions about P.W.8's claim.

22. As rightly pointed out by the learned counsel for the appellant, the handwriting for answers to the questions 1-6 differs from the rest of the content in Ex.P.7, and the case particulars of Panagudi Police Station



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appear to be written by the same person. The prosecution and P.W.8 have failed to provide any explanation for including the case particulars in Ex.P. 7, the seizure mahazar, raising genuine doubts about the prosecution's theory of arrest and confession.

23. Considering the above, this Court has no hesitation in holding that the present appellant is not identified as the person involved in the occurrence alleged to have taken place on 21.12.2008, and the prosecution's case that M.O.1-chain was recovered from the accused is highly doubtful. The learned trial Judge's decision to convict the accused, without considering material aspects and giving importance to irrelevant aspects, is liable to be set aside.

24. In light of the above, the Criminal Appeal is allowed and the impugned judgment of conviction and sentence imposed by the learned Assistant Sessions Judge, Valliyoor in S.C.No.353 of 2013, dated 25.08.2023 is set aside. The appellant/ first accused is acquitted of the charges. Since the appellant/first accused is in Jail, he is directed to be released forthwith, unless his detention is required in another case. Fine amount if any paid, shall be refunded to him. Consequently, the connected



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Miscellaneous Petition is closed.

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NCC : Yes/No  
Index : Yes/No  
Internet : Yes/ No

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To

1. The Assistant Sessions Court, Valliyoor.
- 2.The Jail Superintendent, Central Prison,  
Palayamkottai.
- 3.The Section Officer,  
Criminal Section (Records),  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

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**PRE-DELIVERY JUDGMENT MADE IN**

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