



CRL RC(MD)No.50 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.08.2025

PRONOUNCED ON : 20.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.50 of 2023

Sornapandi

... Petitioner

Vs.

State Rep. by,
The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.
(Crime No.960/2005)

... Respondent

PRAYER: Criminal Revision Petition is filed under Sections 379 and 401 Cr.P.C, to call for the records from the lower Court and duly set aside the judgment passed by the learned IIIrd Additional Sessions Court, Tirunelveli District, in Crl.A.No.58 of 2017 dated 09.12.2022 in S.C.No. 317 of 2008 dated 24.08.2017 on the file of the learned Principal Assistant Sessions Court, Tirunelveli District and duly set aside the same.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.M.Sakthi Kumar
Government Advocate (Crl.side)



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ORDER

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Prologue:

This Criminal Revision, at the instance of A1, calls in question the concurrent findings of the Principal Assistant Sessions Judge, Tirunelveli in S.C. No.317 of 2008 and the judgment in criminal appeal confirming the conviction of the petitioner for offences under Sections 448 and 394 IPC and the sentence of simple imprisonment for a period of one month under Section 448 IPC and rigorous imprisonment for a period of five years with a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for three months, under Section 394 IPC, with benefit of set-off and concurrent running of sentences. A3 was acquitted by the learned Trial Court.

2. The petitioner asserts that the case is marred by (i) non-description of assailants in the FIR though the offenders were “unknown persons”, (ii) an arrest after 15 months based on a bare suspicion and alleged confessions, (iii) a compromised chain of recovery with hostile/ vacillating witnesses, (iv) a doubtful Test Identification Parade (TIP) allegedly preceded by exposure of accused in police station, and (v) non-production of fingerprint material said to have been lifted



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from the scene. On these premises, interference in revision is sought.

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Case of the Prosecution:

3. The Inspector of Police, Perumalpuram Crime Police Station, filed the final report against the accused on the allegation that on 23.09.2005 at about 12.00 noon, the first accused Sornapandi and second accused Sivanpandi with knives along with third accused Manikandan with intention to commit robbery trespassed into house of informant Bhagavathi and by showing the knife, threatened her and robbed gold ornaments and also caused injury. Thereby Accused Nos. 1 to 3 committed offences punishable u/s 448, 394, 397 and r/w 34 of I.P.C.

4. This case was taken on file by the learned Judicial Magistrate's Court No.I, Tirunelveli as PRC.No.29/2007 and accused were furnished with copies of the case documents under section 207 Cr.P.C., 1973. Having found that this case is exclusively triable by the Court of Sessions, the above Magistrate has committed the case to the Hon'ble Principal District and Sessions Judge, Tirunelveli under section 209(a) Cr.P.C., 1973. The learned Principal District and Sessions Judge,



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Tirunelveli, has taken the said case on file as SC.No.317/2008 and made over the case to the learned Principal Assistant Sessions Judge, Tirunelveli. On appearance of the accused before the learned Trial Court and upon perusing the records and hearing of arguments on both sides and having satisfied that *prima facie* case made out against the accused and from the available records, the learned Trial court framed charges against Accused No.1 u/s 448 and 397 I.P.C. and Accused No.2 u/s 448 and 394 I.P.C and Accused No.3 u/s 448 and 394r/w 34 I.P.C. When the said charge was read over and explained to the accused, they have denied the charges. Hence, the learned Trial Court court has ordered the prosecution to let in evidence.

5. To prove the guilt of the accused, the prosecution has examined P.W.1 to P.W.13 and Ex.P1 to Ex.P.14 marked and exhibited M.O.1 to M.O.5. It is the case of prosecution that P.W.1.Bhagavathi is residing in V.M.Chatram, V.O.C. Nagar in door number 3C. P.W.3. Esakkimuthu Pandian is the husband of P.W.1. On 23.09.2005 at about 7.45 A.M. P.W.1, went to Agnus hospital in Palayamkottai. Then went to the market and about 12.00 noon she returned home. At that time Accused No.1/Sornapandi and Accused No.2/Sivanpandi went to the house of P.W.1 / Bhagavathi and asked water. When P.W.1 went



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inside her house to take water, Accused No.1 and Accused No.2 were talking something. On suspicion P.W.1 tried to lock the door inside her house. Suddenly both the accused pushed the door and Accused No.1 / Sornapandi caught hold of the hair of P.W.1, Accused No.2 / Sivanpandi with M.O.5. / knife threatened her and asked her to give them the thali chain.

6. Then both the accused took P.W.1. to the room where bureau was kept. Accused No.1 broke open bureau and took M.O.2 Minor chain, M.O.3 Necklace. Then 2nd accused Sivanpandi asked P.W.1 to give him her bangle. He tried to cut the bangle with M.O.5 / knife and it caused injury on the right hand of P.W.1. After taking the bangle and other ornaments Accused Nos. 1 and 2 tied the hands and legs of P.W. 1. with a cloth and escaped from scene. P.W.1 made a cry and hearing the noise P.W.2 / Subbiah who is the neighbor came there and seeing the injured P.W.1. He took her to Government Medical College Hospital, Tirunelveli. Then P.W.2 informed this to P.W.3 Esakkimuthupandian who is the husband of P.W.1. and he also went to the hospital. On getting intimation from the hospital P.W.9 / Sub Inspector of Police Mr.Arunachalam went to hospital on 23.09.2005 at 16.30 hours and recorded Ex.P.1. Statement of P.W.1. After returning to police station,



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he registered a case in crime No.960 of 2005 u/s 394 r/w 397 I.P.C.

Ex.P.8 is the First Information Report.

7. Then, the Inspector of Police P.W.12 / Mr.Ramesh took up investigation and at 17.30 hours, he went to the scene of occurrence and prepared Ex.P.2 / observation Mahazar and Ex.P.14 Rough Sketch in the presence of P.W.4 / Vellathurai and P.W.7 / Esakkithurai. Then, he examined P.W.1 / Bhagavathi, P.W.2 / Subbiah, P.W.3 / Esakkimuthu Pandian and P.W.9 / Sub Inspector of Police Mr.Arunachalam and recorded their statements. Since, he was transferred P.W.11 / Inspector of Police Mr.MuthuKumar took up further investigation on 23.12.2006 at about 6.00 A.M. On suspicion P.W.11 / Inspector of Police Mr.Muthukumar arrested second accused Sivanpandi. On interrogation, the 2nd accused Sivanpandi voluntarily gave a confessional statement. P.W.11 recorded his confession in the presence of P.W.5./ Kumar and one Petchimuthu. In the confession, the accused had stated that he would hand over the knife and that he handed over the stolen ornaments to P.W.6 Murugesan in Vadukatchimalai.



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8. Then, on that day at 9.30 A.M. in the presence of same witnesses P.W.11 arrested 1st Accused / Sornapandi who was identified by Accused No.2 Sivanpandi. Accused No.1 / Sivanpandi voluntarily gave a confessional statement and he has stated that he sold the gold ornaments to P.W.8 Iyyappan. Ex.P3 and Ex.P.4 are the signatures of P.W.5 Kumar in the confession of Accused No.2 and Accused No.1 respectively. Ex.P.12 and Ex.P.13 are the admissible portion of confession of Accused Nos. 2 and 1. Then P.W.11 took the accused along with witnesses to the house of Accused No.2 Sivanpandi and from there he recovered M.O.5 knife under the cover of Ex.P.5. Athatchi at 13.00 hours. Then, they went to Vadukatchimalai and recovered M.O. 3.Necklace, M.O.4. Bangle, M.O.2 Gold chain from P.W.6 Murugesan at 14.00 hours. Ex.P.6 is the Athatchi and at the instance of Accused No.1 / Sornapandi, P.W.11 recovered M.O.1 Thali Chain from P.W.8 Iyyappan and prepared Ex.P.7 Athatchi. Then, he brought the accused to the Police Station and sent them for remand. He sent the recovered property to the Court.

9. On 02.01.2007, he submitted that Ex.P.10 requisition for conducting test identification parade. On 08.01.2007, the learned Judicial Magistrate No.IV, Tirunelveli, P.W.10 Mr.Nagarajan, conducted



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the test identification parade. Ex.P.11 is the served summons to P.W.1.

Ex.P.9 is the test identification parade report. During test identification parade P.W.1.Bhagavathi identified Accused Nos.1 and 2. On 23.01.2007, since Accused No.3 Manikandan is also involved in this case, P.W.11 formally arrested him in Central Prison, Tirunelveli who was in custody in connection with some other case. Then, since P.W.1. Muthukumar was transferred, P.W.13 Inspector of Police Stanley Jones took up further investigation and on perusal of the investigation reports and statements, he laid the final report against Accused Nos.1 and 2 u/s 448, 394 and 397 r/w 34 and Accused No.3 u/s 448, 394 and 397 r/w 34 I.P.C. The accused were examined under section 313(1)(b) Cr.P.C., 1973, in respect of the incriminating circumstances found against them in the prosecution evidence. The accused denied them as false.

Gist of the learned Trial Court's Judgment:

10. The prosecution alleged that on 23.09.2005 at about 12.00 hours, Accused Nos.1 and 2, armed with knives, along with Accused No. 3, trespassed into the house of P.W.1 Bhagavathi, robbed her thali chain, necklace, minor chain and bangle after threatening and injuring her right hand, and fled. On hospital intimation, Ex.P1/statement of



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P.W.1, was recorded and Ex.P8/FIR in Crime No.960/2005 under Sections 394 r/w 397 IPC was registered. In the course of Trial, observation mahazar was marked as Ex.P2 and rough sketch was marked as Ex.P14. Later, on 23.12.2006, P.W.11 (second Investigating Officer) claims to have arrested the 2nd Accused on suspicion at a bus stand and thereafter based on the 2nd Accused's confession, 1st accused was arrested, following which recoveries of M.O.1 to M.O.5 were allegedly effected from P.W.6 and P.W.8 and from the house of the 2nd accused (knife). Test Identification Parade was conducted by P.W.10 by the learned Judicial Magistrate IV, Tirunelveli, on 08.01.2007 where P.W.1 identified Accused Nos.1 and 2.

11. The learned Trial Court found P.W.1's testimony reliable and accepted the Test Identification Parade conducted by the learned Judicial Magistrate No.IV, Tirunelveli. Considering P.W.5's contradictions as non-fatal, the learned Trial Court held P.W.8's resiling in cross as a subsequent development after supporting the prosecution in chief. On that basis, the learned Trial Court acquitted Accused No.3 for want of material and convicted Accused Nos. 1 and 2 under Sections 448 & 394 IPC while holding that Section 397 IPC as charged against Accused No.1 was not made out for want of proof of "use" of deadly



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weapon by Accused No.1.

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Gist of the judgment in criminal appeal:

12. In appeal, the learned Appellate Court affirmed conviction and sentence, holding *inter alia* that: (i) P.W.1 is an injured eyewitness whose account is consistent with Ex.P1 and medical evidence; (ii) Test Identification Parade was conducted by the learned Judicial Magistrate in the ordinary course and there was no credible proof that the accused were shown to witnesses prior to Test Identification Parade; (iii) recoveries under Section 27 Evidence Act, 1872, corroborate the ocular version notwithstanding P.W.6 turning hostile and P.W.8 resiling in cross; (iv) non-production of fingerprint report is a lapse not going to the root, as conviction can rest on reliable ocular evidence.

Grounds in revision:

13. The judgment of the lower Court is against law, the weight of evidence and the broad probabilities of the case. The judgment of the lower Court has to be set aside, since according to the prosecution two unknown persons forcibly robbed the gold ornaments of the PW.1. But, the salient features of the accused was not mentioned in the FIR, the



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occurrence happened on 23.09.2005, and further on 23.12.2006 when the respondent police arrested the Accused No.2 on a suspicious manner who was standing in the Bus stand. Based on the confession of the Accused No.2, the present revision petitioner has been roped in this case. Based on their confession, the M.Os have been recovered from the accused persons. The PW. Nos. 6 and 8 speak about the recovery of Material Objects 1 to 5. The PW.6 turned as hostile, the PW.8 evidence disclosed that the police had threatened the said witness by compelling him to return back the jewels and further his evidence is totally against the case of the prosecution.

14. The Judgement of the lower Court has to be set aside since according to the prosecution the occurrence happened on 23.09.2005 and the accused persons had been arrested on 23.12.2006 and the identification parade had been conducted on 08.01.2007 and further prior to the Test Identification Parade, the witnesses had seen the Accused persons in the Police station. The evidence of PW-5 is taken into consideration immediately after the arrest of the accused persons the witnesses, namely, P.W-1, 3 and 5, have seen the accused in the Police station.



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15. The judgment of the lower Court has to be set aside, since according to the evidence of the PW.11 who has conducted the investigation at first one Inspector of Police, namely, Xavier has taken the fingerprint from the place of occurrence and further PW.11 evidence disclosed that the fingerprints has been taken from the accused persons. But both the fingerprints report has not been marked before the Court to prove the case of the prosecution. The judgment of the lower Court has to be set aside, since the learned Appellate Court is not expected to fill up the lacuna of the prosecution.

Submissions:

16. The learned counsel for the petitioner contended that where FIR itself says “unknown persons” but bears no descriptive particulars, later identification after police exposure is unsafe, the Test Identification Parade loses probative value if the witness had seen the accused earlier. He further submitted that the recovery is the lone corroboration but its chain is broken. In particular, P.W.6 has turned hostile and P.W.8 in cross deposed that jewels were surrendered under threat and failure to produce fingerprint report invites adverse inference under Section 114(g) Evidence Act, 1872. The delay of 15 months in arrest remain unexplained and suspicion cannot substitute proof beyond reasonable doubt. Reliance placed on principles that Section 397 IPC requires



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individual “use” of weapon and that Test Identification Parade is only an investigative aid.

17. Per contra, the learned Government Advocate (Crl. Side) supported the concurrent findings and submitted that P.W.1, being an injured victim, is consistent and inspires confidence, the Test Identification Parade conducted by a Magistrate stands unless clear proof of prior exposure is shown. Section 27 recoveries of M.Os corroborate P.W.1’s version. The hostility of recovery witnesses does not *ipso facto* demolish the prosecution if core facts stand proved by other *materia*. He further submitted that the investigative lapses, if any, do not vitiate a trial otherwise supported by reliable ocular testimony.

18. Heard the learned counsel for the petitioner, the learned Government Advocate appearing for the respondent and carefully perused the materials available on record.

19. ***Points for determination:***

- (i) Whether the Test Identification Parade and in-Court



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identification of Accused No.1 are reliable in the facts proved?

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(ii) Whether the recovery of M.Os said to implicate Accused No.1 is proved and worthy of reliance?

(iii) Whether non-production of fingerprint material, delayed arrest and infirmities in witness testimony cumulatively generate reasonable doubt?

(iv) Whether the concurrent findings suffer from perversity warranting interference in revision?

Analysis:

20. The FIR names unknown persons and records no identifying features. In such cases, the Test Identification Parade assumes heightened significance as a safeguard against dock identification becoming a mere formality. Here, Test Identification Parade was conducted on 08.01.2007, that is, about 15 months after occurrence and a fortnight after the arrest on 23.12.2006. The defence brought on record through P.W.5 that P.W.1 and others had seen the accused at the police station post-arrest. The learned Trial Court discounted P.W.5 as “not trustworthy” due to relationship and contradictions. However, P.W.5 is the sole independent mahazar witness cited for both confession



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and recovery from early morning till late afternoon on 23.12.2006 and his presence for long hours with the police, coupled with his admitted relationship with P.W.1, is itself a circumstance requiring cautious scrutiny of Test Identification Parade and recovery.

21. The time-lag between offence, i.e., on 23.09.2005 and Test Identification Parade, i.e., on 08.01.2007, is substantial. Absence of salient features in FIR, the probative value of Test Identification Parade diminishes when there is credible suggestion of prior exposure. The prosecution did not adduce positive evidence excluding such exposure, for instance, station diary entries, segregation, or precautions. In these circumstances, the Court must insist upon independent corroboration of identity beyond a compromised Test Identification Parade and a dock identification that follows it.

22. The prosecution built corroboration through recoveries that (i) the M.O.No.5 knife from the 2nd Accused's house; (ii) the ornaments from P.W.6 and P.W.8 at the instance of the Accused No.2 / Accused No.1. However, P.W.6 turned hostile. P.W.8 supported the prosecution in chief but in cross stated that he handed over gold in the police



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station under threat and that he had purchased the chain from Accused No.2, not Accused No.1. He further stated that the police did not recover the ornament from his shop. This is not a minor inconsistency but a material contradiction striking at the core of the Accused No.1's linkage.

23. The learned Trial Court reasoned that P.W.8 was “won over” after chief and even if the Court may rely on a creditworthy portion, the portion that exclusively implicates Accused No.1 stands materially shaken. Section 27 requires that the information received from the accused distinctly relates to the fact discovered, where the recipient of M.O. disowns the transaction or attributes it to another accused, the distinct nexus to Accused No.1 is left in doubt. Further, the knife recovery (M.O.5) from Accused No.2, a year later has weak probative force and, in any event, does not advance the case against Accused No. 1.

24. P.W.11, Inspector Muthu Kumar stated that fingerprints were lifted from the scene by the Inspector of Police who first investigated the case. The prosecution, however, neither produced the report nor examined the expert. This is not a mere lapse in a case turning on



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identity of unknown assailants within a house. Where the State asserts availability of neutral scientific evidence but withholds it without explanation, Section 114(g) Evidence Act, 1872, permits an adverse inference that the evidence, if produced, may have been unfavourable.

25. P.W.1 is an injured witness and her testimony merits respect. Yet, when identity is the linchpin and (i) FIR carries no descriptors, (ii) Test Identification Parade is plausibly tainted by prior exposure and delayed, (iii) recovery witnesses are hostile/contradictory particularly as to Accused No.1, and (iv) scientific evidence is withheld, the Court must ask whether guilt is established beyond reasonable doubt as to Accused No.1. The answer, on this record, is in the negative.

26. The learned Trial Court itself discarded Section 397 IPC as to Accused No.1 for want of proof of “use” of weapon and that careful approach should have logically extended to test the Section 394 IPC charge against Accused No.1 with equal rigour where the identity linkage rests on weakened TIP/recovery and absent scientific corroboration. The learned Appellate Court’s affirmation, in effect, fills gaps by presuming robustness of TIP and recovery without dealing with



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the specific contradictions elicited in cross-examination of P.W.8 and the non-production of fingerprint material. Accused No.3 was acquitted for want of incriminating material. On parity of reasoning, where the independent corroboration *qua* Accused No.1 is infirm, the benefit of doubt must equally enure to him.

27. While revisional jurisdiction is exercised sparingly, interference is warranted where the concurrent view suffers from material irregularity or manifest miscarriage of justice. Conviction of Accused No.1 on an identification-cum-recovery edifice that is structurally unsound amounts to such miscarriage.

28. The conviction and sentence imposed on the petitioner/ Accused No.1 / Sornapandi in S.C. No.317 of 2008 by the learned Principal Assistant Sessions Judge, Tirunelveli, as affirmed in criminal appeal, for offences under Sections 448 and 394 IPC, are set aside. The petitioner is acquitted of all charges. The fine, if paid, shall be refunded. The bail bond, if any, shall stand cancelled.

29. As regards case properties, M.O.5 (knife) shall be dealt with as



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per law. Ornaments already released to P.W.1 on bond, orders regarding bond cancellation after appeal period shall stand. Nothing further survives in view of this acquittal.

Epilogue:

30. The Court does not sit unmoved by the anxiety of a householder robbed within her home. Yet, criminal adjudication demands that conviction rest on untainted identification, legally proved recoveries, and full disclosure of scientific evidence where available. Investigative lapses and doubtful corroboration cannot be bridged by conjecture. The golden thread of proof beyond reasonable doubt must remain unbroken. On the present record, extending the benefit of doubt to the petitioner is not indulgence but duty.

31. In fine, this Criminal Revision case is allowed.

20.11.2025

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

- 1.The Principal Assistant Sessions Judge,
Tirunelveli District
- 2.The IIIrd Additional Sessions Judge,
Tirunelveli District.
- 3.The The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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