

Crl.A(MD)No.379 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2025

CORAM:

THE HON'BLE DR.JUSTICE R.N.MANJULA

Crl.A(MD)No.379 of 2016

R. Krishnamoorthy

... Appellant

Vs

1. The Inspector of Police,
Crime Branch,
Anna Nagar Police Station,
Madurai City.

2. Balachandran

3. Santhiyagu

4. Deepan Chakkaravarthy

5. Karthik Alais Karthikeyan

6. Ganesh

7. Santharam

8. Chandra Sekaran

9. Amarnath

10. Premnath

... Respondents



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Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to set aside the Judgment of acquittal, dated 01st February, 2016 passed in SC No.248 of 2010 on the file of VI Additional Sessions Court, Madurai and convict the accused therein.

For Appellant : Ms.R.Manija
for M/s Ajmal Associates,

For Respondent : Mr.K.Ganasekaran - R1
Government Advocate (Criminal)

Mr.N.Anantha Padmanathan
Senior Counsel – R3-R5,R7,R8

Mr.C.Susikumar – R6
Legal Aid Counsel

Mr.K.Kumaravel – R9, R10

JUDGMENT

The present appeal has been filed challenging the Judgment of the learned VI Additional Sessions Judge, Madurai, dated 01.02.2016 made in SC No.248 of 2010.

2.The appellant is the defacto complainant, who was examined as PW1 has filed this appeal against acquittal. During the course of appeal, A1 and A4 have died. Hence, this appeal as against A1 to A4 got abated.



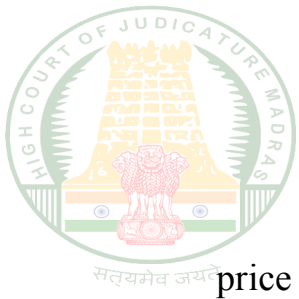
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3. In this case, one Sundaresan, who is the husband of PW5 was originally arrayed as A5 and subsequently charges have been dropped against him, in view of his statement under Section 164 of Cr.P.C., given under the plea of bargaining.

4.(i).The case of the prosecution as it appears from the records is that the appellant is a resident of Tirupur who is involved in a real estate business. The first accused was residing in Madurai and he was involved in real estate business under the name and style of Malligai Groups. The third accused is the son of the first accused. A2, A5, A4, A7 are the brokers, who are working for the first accused. A6, A8 are the brothers of first accused. A9 and A10 are the Auditors of the first accused.

(ii).The first accused and the appellant had got acquaintance due to the business in respect of purchasing the lands belonging to Madura Coats. However, there was some litigation filed between themselves, and the appellant had sold the above property to one PRP Group and on 09.01.2007 at about 09.00p.m., the appellant had been to the office of the accused 9 and 10 and informed that the maximum sale



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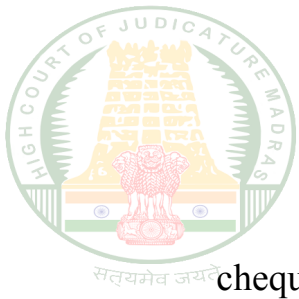
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price is Rs.1.50 crores.

(iii). All the accused had hatched a criminal conspiracy at the house of first accused, in order to kidnap the complainant for the purpose of extorting an amount of Rs.3.75 Crores by putting him under the fear of death and to extract blank cheques and to obtain signature in the non-judicial stamp papers.

(iv).Pursuant to the common decision on 09.1.2007 at about 11.00 a.m., the accused A2 had been to the office of A9 and A10. They were accompanied by rest of the accused in a Car bearing registration No.TN 59 V 1000 and the accused forced PW2, driver of PW1 to drive the PW1's Car bearing registration No.TN 33 AD 5511. Both PW1 and the driver of PW1 i.e. PW2 were taken to the house of one Sundaresan situated at Mullikundu village.

(v).During that time, the accused persons assaulted PW1 with hands and forced him to sign in the blank stamp papers. At gunpoint, the signatures were obtained from PW1 and they extorted a sum of Rs.2,99,000/- from PW1 and obtained signatures in 5 blank



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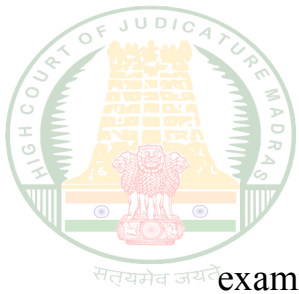
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cheque leaves and stamp papers. The accused confined PW1 and PW2 in the house of Sundaresan from the night of 09.01.2007 till 10.01.2007.

(vi). In the meantime, on the instructions of 1st accused, the 3rd accused encashed the cheque obtained from PW1. After that, the accused have dropped PW1 and PW2 at Melur Road, Mattuthavani and threatened to kill them, if the occurrence was reported to the police.

5. On receiving the complaint from the defacto complainant, a case in Cr.No.62 of 2007 has been registered. After completing the investigation, charge sheet has been filed against the accused under Sections 120(b), 353(2 counts), 347(2 counts), 395 r/w 397, 386, 506(i), 363 r/w 109 IPC. After taking cognizance of the charge sheet by the learned Judicial Magistrate, Madurai in PRC No.20 of 2010 and after observing the legal mandates, the case was committed to the learned Principal Sessions Judge, Madurai. Subsequently, it was made over to the learned VI Additional Sessions Judge, Madurai.

6.As the accused denied their involvement, they were subjected to trial. On the side of prosecution, 33 witnesses were



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examined as PW1 to PW33 and 61 documents were marked as Ex.P.1 to Ex.P.61 and M.O.1 to M.O.9 were marked. On the side of defence, DW1 was examined and Ex.D1, Ex.D2 were marked.

7.After observing the legal mandates and concluding the trial and on appreciating evidence, the learned trial Judge had acquitted all the accused from the charges levelled against them.

8.Aggrieved over that, the defacto complainant/appellant has preferred this appeal.

9.The learned counsel for the appellant submitted that the wife of one Sundaresan, who has been examined as PW5 has stated in her evidence that PW1, PW2 and the accused have stayed in her house on the alleged day of occurrence, but the trial Court did not consider her evidence; the confession statement of A3 also shows that the defacto complainant was confined in the house of one Sundaresan and after encashing the cheque received from PW1, they left him at Mattuthavani bus stand; one Sundaresan had given 164 statement, wherein, it is admitted that the accused were staying in the house of Sundaresan during



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the course of occurrence, but the same was not considered by the trial judge; on the very same day, the cheque issued by PW1 for Rs. 75 lakhs was encashed by A3 and this was also not taken as circumstantial evidence in favour of the prosecution.

10. The learned Senior Counsel appearing for the respondents 3 to 5, 7 and 8 submitted that in this case, PW5, who is the wife of one Sundaresan has turned hostile; the trial Court has rightly appreciated her evidence; the said Sundaresan did not turn out as an approver in this case and he did not subject himself as a witness; PW1 and his Driver, PW2 have stayed in a hotel at Madurai and they have vacated the Hotel on 10.01.2003; in such case, there is no question of kidnapping and keeping them in unlawful confinement; even according to the case of prosecution, the defacto complainant has borrowed a sum of Rs. 1 Crore and issued a cheque for Rs. 75 lakhs and its collection is no way unnatural; Ex.P.42 and Ex.P.43, are Accident Registers of PW1 and PW2, would show that they have been to the hospital on the early hours of 14.01.2007; as per the Doctor's evidence, the defacto complainant has given statement to him that he was attacked on the previous day i.e. 13.01.2007; the Doctor has also confirmed that the wounds on the body of PW1 were fresh; but the



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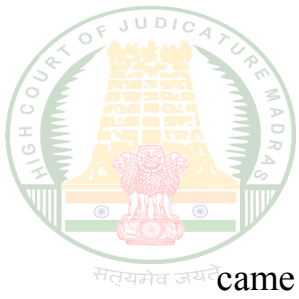
Doctor did not issue any wound certificate, as PW1 absconded from the Hospital without letting the Doctor to discharge him. So, it is submitted that it is not a fit case to be interfered.

11.The learned counsels appearing for the respondents 6, 9 and 10 have also accepted the argument put forth by the learned Senior counsel.

12.I have given my anxious consideration to the submissions made on either side and carefully perused the records.

13.The learned counsel for the appellant has raised only three points viz., the evidence of PW.5, the confession statement given by one Sundaresan and the relevancy of encashment of cheque issued by PW.1 on 10.01.2007.

14.Even according to PW.5, she had learnt about the occurrence only from her husband, Sundaresan that the person, who stayed at her house was said to be one Balachandran/A1. She did not identify the accused in the Court and her evidence is also not specific regarding the date and the manner in which, the defacto complainant



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came to her house, more specifically regarding where he was injured.

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15.The said Sundaresan has given statement under Section 164 of Cr.P.C., by alleging that he only had rescued the defacto complainant/PW1 who was found with injuries on account of an attack made by someone else. He has stated that out of sympathy he had taken PW1 and PW2 to his house for their safe custody for that night alone.

16.So, the combined reading of deposition of PW.5 with the 164 statement of said Sundaresan may give an inference that the defacto complainant had stayed in the house of Sundaresan on the day of occurrence.

17.The prosecution has to prove beyond reasonable doubts, whether PW1 was attacked by the accused as alleged by the said Sundaresan. In fact, the said Sundaresan was not examined as a witness during the trial, in order to state the very same statement given by him under Section 164 of Cr.P.C., and hence, his evidence is not available in the Court.



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18.If PW1 could vacate the Hotel by himself, then it would not be possible that he had been dropped by the accused after attacking him.

19.The Doctor, who was examined as PW28 has stated in his evidence that he had seen PW1 and PW2 with injuries on 14.01.2007 and those injuries were fresh. Even according to the statements of injured persons to the Doctor, it is narrated that they had been attacked on 13.01.2007. So, the statement of the defacto complainant before the Doctor and the Doctor's evidence before the Court on this aspect would completely falsify the case of prosecution.

20.The victims could not take treatment immediately after they have vacated the Hotel. Even if it is presumed that the defacto complainant and his driver PW2 were dropped by the accused and thereafter, they themselves vacated the hotel room, the natural tendency would be to go to the hospital immediately to take treatment for the injuries.



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21. So far as the cheque, which was encashed on 10.01.2007 by A3 is concerned, there is no objection made by PW1 so far. Even according to his complaint, he had availed a loan of Rs.1 Crore from A1 and it is not known whether the payment made towards the cheque issued for Rs.75 lakhs would represent the above loan obtained by him.

22. Had it been the case where the cheque was obtained from the defacto complainant by force and subsequently encashed by the accused, he would have lodged a police complaint in this regard. So in the absence of any such steps taken by the defacto complainant, the mere presenting of the cheque issued by him for collection cannot be considered as related to occurrence as narrated by the appellant.

23. The Hon'ble Supreme Court as held in ***Chandrappa Vs State of Karnataka***, reported in ***2007 AIR SCW 1850*** that the appellate Court can interfere in the appeal filed against acquittal only on the following circumstances. For the sake of convenience, the relevant part of the Judgment is extracted hereunder:



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“From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The [Code of Criminal Procedure](#), 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of



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law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

24.When the trial Court has disbelieved the case of prosecution by means of a speaking order by thoroughly appreciating the case of prosecution and by giving the benefit of doubt, the appellate Court will not normally interfere. Further the Judgment of the trial Court does not show any perversity or commission of any glaring mistake calling for interference.

25.As the benefit of doubt already has gone in favour of the accused and the judgment of acquittal further fortified the same, the appellate Court is expected to act carefully while reversing the Judgment of acquittal. As the appellant has not made any such grounds or showed any materials to claim that the conclusion of the trial Court is perverse, I refrain from interfering with the Judgment of acquittal passed by the trial Court.



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26. In the result, *this Criminal Appeal stands dismissed and the Judgment of the learned VI Additional Sessions Judge, Madurai, dated 01.02.2016 made in SC No.248 of 2010 stands confirmed.*

10.07.2025

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

To

1.The VI Additional Sessions Judge, Madurai

2. The Inspector of Police,
Crime Branch,
Anna Nagar Police Station,
Madurai City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court, Madurai.



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PNM

JUDGMENT IN

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