

Crl. A.(MD)No.44 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 21.07.2025

CORAM

THE HONOURABLE DR. JUSTICE R.N.MANJULA

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1.P.Baskaran

2.P.Ravi

... Appellants

Vs.

State Rep. by the
Inspector of Police,
Ottanchatiram Police Station,
Dindigul District.
In Crime No.375 of 1997

... Respondent/
Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to call for the records relating to the judgment passed in S.C.No.46/08 dated 10.01.2017 on the file of the learned Assistant Sessions Judge, Palani and set aside the conviction and sentence passed against the appellants/accused and acquit them from all charges leveled against them. .

For Appellants : Mr.Gopalakrishnan Raju
for Mr.R.Venkateswaran

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Criminal Side)



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JUDGMENT

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This Criminal Appeal has been preferred challenging the judgment of the learned Assistant Sessions Judge, Palani, made in S.C.No.46 of 2008, dated 10.01.2017. The appellants are A1 and A2.

2.The case of prosecution as it appears from the records is that on 28.04.1997 at about 01.00 p.m., the accused persons 1 to 9 came to the Primary Co-operative Bank at K.Pudukottai Village in an Ambassador Car bearing Registration No.TST-610 and a Motorcycle bearing Registration No.TN-57-7863 and after attacking the Watchman, confined him in the ground floor of the bank; one person guarded the Watchman and the accused 6 to 9 took the articles like Gas Cylinder and Gas Welding Cylinder to the first floor and opened the lock of the doors and went near the chest-box and break the door of the chest-box with the weapons brought by them. This was witnessed by the villagers and they had raised alarm. On hearing the alarm, accused persons 1 to 3 and 9 escaped in the Car and Motorcycle. The second accused was caught hold by the public and handed over to the police.

3.On receiving the complaint from the Watchman, a case in Crime No.375 of 1997 has been registered and taken up for investigation. After



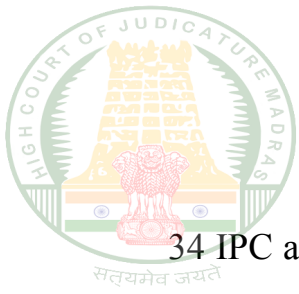
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completing the investigation, charge sheet was filed against A1 to A5 for the offences under Sections 398 read with 34 of IPC and A6 to A9 under Sections 323, 342, 398 read with 34 of IPC. After the copies were furnished to the accused and observing the legal mandates, the case was committed from the Court of Judicial Magistrate No.I, Dindigul to the Principal Sessions Court, Dindigul. The case has been assigned to learned Additional Sessions Judge, Palani for trial.

4.The learned trial Judge has framed charges against A1 to A5 under Sections 398 read with 34 of IPC and A6 to A9 under Sections 323, 342, 398 read with 34 of IPC and questioned them. As the accused denied their involvement and claimed to be tried, trial was conducted.

5.On the side of the prosecution, PW1 to PW18 were examined and Ex.P.1 to Ex.P.22 and M.O.1 to M.O.17 were marked. On the side of defence, one witness has been examined as D.W.1.

6.At the conclusion of trial on observing the essential procedure and on hearing the arguments and appreciating the evidence, the learned trial Judge has convicted the accused 1 and 2 for the offence under Sections 398 read with



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34 IPC and sentenced them to undergo rigorous imprisonment for a period of 8

years and convicted the accused 6 to 9 for the offence under Sections 323 and

398 read with 34 IPC and sentenced them to undergo 6 months rigorous

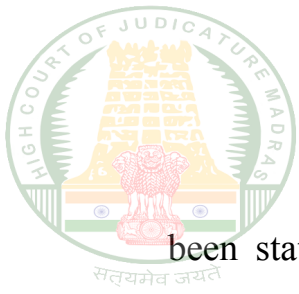
imprisonment for the offence under Section 323 IPC and 8 years rigorous

imprisonment for the offence under Section 398 read with 34 IPC.

7. Aggrieved over that, the appellants/A1 and A2 have filed this appeal.

8. The learned counsel for the appellants would submit that the first appellant/A1 died on 08.11.2017 and to that effect, copy of the death certificate has also been produced. As the first appellant is no more, the appeal against him is abated.

9. The learned for the second appellant submitted that the witnesses were strangers to the second accused. The important witness i.e., P.W1 has stated in his evidence that he could not identify the accused and there is no identification parade conducted. There is no evidence to show who among the accused was standing behind the watchman after he was tied. The witnesses have not identified the accused at the time of trial as well. Even though, it has



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been stated that the villagers have caught hold of the second accused and handed over to the police, there is no evidence on this aspect. P.W6, who is the Secretary of the bank, has stated that when he had arrived to the scene of occurrence, one person was caught and tied down by the villagers. Even, he did not identify who was the person caught hold by the villagers. Even though, it is alleged that the accused has been handed over to the police in the morning at 06.30 a.m., arrest was effected only in the evening at 04.00 p.m. and there is an inordinate delay in registering the First Information Report.

10.The learned Government Advocate (crl.side) appearing for the respondent police would submit that A2 was caught hold by the villagers and was handed over to the police directly. The LPG gas cylinder and welding equipments used for the occurrence, have also been recovered in the presence of P.W.6. The learned trial Judge observed that A2 was caught red-handed and on that score, he was rightly convicted. Therefore, no interference is warranted by this Court.

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



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12.The learned trial Judge got convinced to find the second appellant/second accused guilty because he has been secured by the villagers and handed over to the police. On this aspect, the evidence of P.W.6 is very relevant and he has stated in his evidence that he is the Secretary of the Primary Co-operative Bank. On 27.04.1997, when it was a holiday for the bank, the *de facto* complainant (P.W1) was alone in the Bank. As he could sense the public were running at about 02.00 a.m., he had also come to the bank and seen that the watchman was tied and his mouth was plastered. He came to know that there was an attempt to steal money from the bank. In his evidence, he has stated that one person was caught hold by the villagers and has kept in the premises and other accused had escaped. Even he has not identified the accused saying that he was the person, who had seen tied down by the public on the day of occurrence.

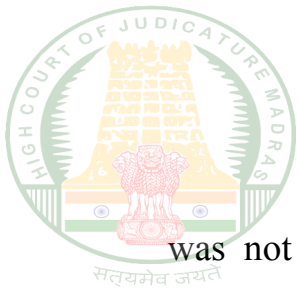
13.Though in all fairness the trial Court is right in giving due sensitivity to the fact that one of the accused has been secured by the villagers in the scene of occurrence itself and handed over to the police, the said event ought to have been asserted by the witnesses in their evidence as well. The one and only witness, P.W.6, who has stated about the same, did not identify the second accused as the person, whom he had seen and secured by the



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public. P.W8, is said to have been the attesting witness to the confession given by the second accused, but he had turned hostile. P.W.9 stated in his evidence that someone asked his signature and he attested the confession along with P.W8. He is said to have stood as a witness for recovery. But he did not state anything specific about the articles that have been recovered. Even P.W.9 has also not identified the second accused that he was the one, who had given the confession. The evidence of P.W.9 is also not helpful for the case of the prosecution.

14.P.W11 is an another witness stood as witness for confession. But his evidence also does not have anything incriminating against the present appellant/second accused. One of the important witness, the watchman, who is the *de facto* complainant, has been examined as P.W.1 and he has stated in his evidence that on the date of occurrence, some persons came and tied him and plastered his mouth and confined him in a room. He has further stated that he was guarded by one of the persons in the group. Even then, he could not identify any of the accused, who were produced in the Court during time of trial. His cross examination would reveal that he has not seen the person who was secured by the public on the alleged day of occurrence and he just heard that someone has been secured by the public. Even the evidence of P.W.1



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was not helpful in identifying the second appellant/second accused as the person who was secured by the villagers. The other witnesses, namely, P.W.2, P.W.3, P.W.4 and P.W.5 have also not identified the accused and everyone has stated in a generalized manner that one person was secured and he was handed over to the police.

15. Unless the persons who has secured the accused, identified and pinpointed that it was the second accused, whom they have secured on the alleged day of occurrence, it cannot be concluded that the second accused has involved in the offence. Even though, the second appellant was said to have been handed over to the police at about 06.30 a.m., he has not been arrested immediately and he has been arrested only at about 04.00 p.m in the evening. When a public in the group came to the police station and handed over a person saying that he attempted robbery in a Bank, it would not have taken that much time for the police to effect the arrest of the accused. In fact, P.W.1 has also stated that he was taken by the public to the police station at about 05.00 a.m. and he has given the complaint at about 05.00 a.m. FIR has also been registered at about 06.30 a.m. itself, but the accused has been arrested only in the evening and that also will earn the benefit of doubt in favour of the accused.



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16.The learned trial Judge has omitted to appreciate the lacune in the case of the prosecution, especially the inadequacy in the identification of the second appellant/second accused as the person who was secured by the villagers and handed over to the police. As the only important point that the second appellant/second accused caught red handed, was the factor influenced the learned trial Judge to find the accused guilty. The learned trial Judge ought to have appreciated the fact as to whether the second appellant/second accused has been identified rightly. In the absence of the same, it may not be fair on the part of the learned trial Judge to find the second accused guilty. In view of the failure to appreciate the evidence in a proper perspective, I feel the judgment of the trial Court calls for interference.

17.In the result,

(i) This Criminal Appeal is allowed as against the second appellant and this Criminal Appeal is dismissed as abated as against the first appellant.

(ii) The conviction and sentence imposed on the second appellant/second accused by the judgment of the learned Assistant Sessions Judge, Palani, in S.C.No.46 of 2008 dated 10.01.2017, is set aside. The second appellant/second accused is acquitted from the offences under Sections 398 r/w 34 IPC.



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iii) The bail bond executed by the second appellant, if any, shall stand terminated and the fine amount, if any, paid by the appellant shall be refunded to him.

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

1.The Assistant Sessions Judge, Palani.

2.The Inspector of Police,
Ottanchatiram Police Station,
Dindigul District.

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



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Dr.R.N.MANJULA, J.

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