

Crl.A(MD)No.54 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.06.2025

CORAM:

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

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1. Raja @ Poori

2. Stalin @ Mani

... Appellants

Vs

The Inspector of Police,
Ottanchathiram Police Station,
Dindigul District, Crime No.375/1997.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records relating of the learned Assistant Sessions Judge, Palani in SC No.46 of 2008, dated 10.01.2017 and set aside the conviction and sentence passed against the appellants/accused 6 & 7 and acquit them from all the charges leveled against them.

For Appellants : Mr.N.Madhava Govindan

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



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JUDGMENT

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The present appeal has been filed challenging the Judgment of the learned Assistant Sessions Judge, Palani, dated 10.01.2017 made in SC No. 46 of 2008. The appellants are A7, A8.

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 and confined him in the ground floor of the bank; one person guarding the Watchman and the accused 6 to 9 taken 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. Thereafter, Police came to the spot and arrested some of the accused.



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3.On receiving the complaint from the Watchman, a case in Cr.No.375/1997 has been registered and taken up for investigation. After completing the investigation, charge sheet was filed against A1 to A5 for the offence under Section 398 r/w 34 of IPC and A6 to A9 under Sections 323, 342, 398 r/w 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 Principal Sessions Court, Dindigul. The case has been assigned to Additional Sessions Judge, Palani for trial.

4.The learned trial Judge has framed charges against A1 to A5 under Section 398 r/w 34 of IPC and A6 to A9 under Section 323, 342, 398 r/w 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 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.



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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 Section 398 r/w 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, 398 r/w 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 r/w 34 IPC.

7. Aggrieved over that, the appellants have filed this appeal.

8. The learned counsel for the appellants submitted that the date of commission of offence is 28.04.1997 and the appellants have been in custody for the period from 26.01.1997 to 06.11.1997. Therefore, they could not have involved in the occurrence, which is said to be occurred on 28.04.1997.



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9.Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent police categorical in his contention that the trial Judge after appreciating the oral and documentary evidence in a right perspective, convicted the accused and therefore, no interference is warranted by this Court.

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

11.The appellants are A7 and A8. For the sake of clarity, their names are given as found in the charge sheet as Raja @ Poori and Stalin @ Mani.

12.PW1 is the watchman and he has stated in the evidence that one day during the year 1997, two persons came and attacked him and confined him in a room and thereafter, he heard the noise of people coming there and they helped him to be released. He heard the noise of people saying that they have caught hold of one of the accused. They also took him to the police station in order to lodge a complaint. The accused, who



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was caught hold by the people is shown as second accused in this case.

Based on the confession of A2, the appellants/A7, A8 have been impleaded as accused in this case.

13.The Jail Superintendent of Udumalpet Sub - Jail has been examined as the DW1. DW1 in his evidence has stated that the appellants by name Poori @ Rajan and Stalin @ Mani were confined in the prison from 26.01.1997 to 14.04.1997 in connection with their involvement in some other cases. On 15.04.1997 they were transferred to Coimbatore Central Prison.

14.It is claimed by the learned counsel for the appellants that even after they have been transferred from Sub Jail to Central Prison on 15.04.1997 they continued to be in Central Prison until they got bail.

15.According to the submission made by the learned counsel for the appellants, these petitioners had been in prison from 26.01.1997. As these accused were absconding for a long time, they were arrested only on 26.01.1997.



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16.The prosecution did not produce any documents to show that the appellants were outside the prison during the time of occurrence, ie., on 28.04.1997.

17.The appellants have filed two bail petitions in Crl.O.P(MD) Nos.15425 and 15439 of 1997 seeking bail in connection with Cr.Nos.202 of 1995 and 56 of 1980, in which, they have been impleaded as accused.

18.In fact, the High Court was pleased to dismiss those petitions on 06.11.1997. In the said order, this Court has observed that the petitioners were in jail from 26.01.1997. For sake of clarity, that part of order made in paragraph No.3 is reproduced hereunder.

“3... Having regard to the facts that the occurrence had taken place on 27.03.1988 and the charge sheet has been filed on 31.01.1989 and the petitioners are in jail from 26.01.1997, I deem it fit to direct the lower Court to split up the case as against the petitioners and go on with the trial and dispose it



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*of an expeditiously as possible. With this observation,
these bail petitions are dismissed.”*

19.It has been mentioned that the appellants continued to be in prison from 26.01.1997. The charge sheet has been filed against the accused, who were already in prison in some other case.

20.The order of this Court, dated 06.11.1997 also makes it clear that the petitioners have continued to be in prison from 26.01.1997. When the occurrence was said to have taken place on 28.04.1997, the appellants are found to be in prison and hence, they could not been committed the offence, occurred on 28.04.1997.

21.The order of this Court made in in Crl.O.P(MD) Nos. 15425 and 15439 of 1997 on 06.11.1997 would also make it clear that these appellants continued to be in prison and hence, it is not possible for them to commit the offence as alleged in the charge sheet.

22.The above essential points were not elaborately dealt by the learned trial judge without proper appreciation of the defence of 'alibi',



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the accused were found guilty. There is no oral or documentary evidence to show the involvement of the appellants/A7, A8 in Cr.No.375 of 1997.

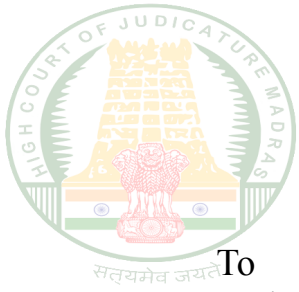
23.In view of the aforesaid reasons, this appeal is allowed.

24. In fine,

- *the Criminal Appeal stands allowed.*
- *The appellants are acquitted from the offence under Sections 323, 398 r/w 34 IPC;*
- *The bail bond executed by the appellants if any, shall stand terminated and the fine amount, if any paid by the appellants shall be refunded to them.*

17.06.2025

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



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To

1. The Sessions Judge,
Special Court for POCSO Act Cases, Tirunelveli

2. The Inspector of Police,
All Women Police Station,
Nanguneri, Tirunelveli District.

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

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



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R.N.MANJULA,J.

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