



Crl.R.C.No.336 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2026

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.R.C. No. 336 of 2023

Siva @ Sivakumar

..Petitioner

Vs.

State rep. By
Inspector of Police,
Erode North,
In crime No. 79/2008,
Erode District.

..Respondent

Prayer: Criminal Revision Petition under Sections 397 & 401 Cr.P.C. to set aside the judgment dated 27.01.2020 made in C.A. No. 236 of 2018 by the I Additional District and Sessions Court, Erode confirming the judgment dated 29.06.2018 passed in S.C. No. 69 of 2008 by the Principal Sessions Court, Erode.

For Petitioner :: Mr.V. Parthiban

For Respondent :: Mr.R.VinothRaja
Govt. Advocate (Crl.Side)

O R D E R



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The revision challenges the judgment of conviction imposed on the petitioner by the Trial Court in S.C. No. 69 of 2008 for the offences under Sections 341, 395 r/w 397 and 450 IPC and sentencing him to undergo simple imprisonment for a period of one month for the offence under Section 341IPC; rigorous imprisonment for a period of 7 years together with a fine of Rs. 1000/- carrying a default sentence for the offence under Section 395 r/w 397 IPC and simple imprisonment for a period of 3 years along with a fine of Rs. 500/- carrying a default sentence of simple imprisonment for a period of one month for the offence under Section 450 IPC. This was confirmed by the judgment of the Appellate Court in Criminal Appeal No. 236 of 2018.

2. It is the case of the prosecution that on 28.01.2008, at about 2.30p.m., at the house of P.W.1, the petitioner along with seven other accused came in motorcycles and committed dacoity of 19.75 sovereigns of gold jewels kept under a secret drawer of wooden cot in the bedroom of the house; that A1 to A3 threatened the witnesses of dire consequences; that A1/petitioner herein was armed with a kitchen knife ; that the victim's



mouth was gagged with a cloth and thus, the petitioner and others committed the aforesaid offences.

3. Before the Trial Court, the prosecution examined P.W.s 1 to 14 and marked exhibits P1 to P36 besides marking M.O.s 1 to 22. On the side of the defence, two witnesses were examined and 6 documents were marked.

4. The Trial Court, after considering the evidence on record, found the petitioner guilty of the aforesaid offences and sentenced him as aforesaid. The Appellate Court confirmed the conviction and sentence imposed by the Trial Court.

5. Learned counsel for the petitioner would submit that P.W.1 cannot be believed since it is found in the evidence of the Investigating Officer that she could not identify or describe the features of the petitioner; that the identification parade conducted a month after the occurrence cannot be the basis to believe the version of P.W.1; that the recovery from the



petitioner also cannot be believed and that the judgments of the Courts below are therefore liable to be set aside. The learned counsel would further submit that in any case, the prosecution has not established the offence under Section 397 IPC, as there is nothing on record to show that the petitioner had used a deadly weapon, which is a necessary ingredient to attract under Section 397 IPC. The learned counsel relied upon the following judgments of the Hon'ble Supreme Court:

- i. Phool Kumar Vs. Delhi Administration [1975 AIR SC 905]
- ii. Raja Vs. The State [1986 CriLJ 285]
- iii. Prakash and Kalidas @ Kaliappan Vs. State
[Crl.A.No.1452 of 2025 dated 09.03.2011]
- iv. Kumar @ Mayakumar Vs. State by the Inspector of Police,
Palladam Police Station, Coimbatore District.
[Crl. A.No. 241 of 2011 dated 10.12.2018]
- v. Senthilkumar @ Kundu Senthil Vs. State
[2023 (1) LW (Crl.) 626]
- vi. Balik Ram Vs. State [1983 (2) CLR 692]
- vii. Azam Vs. State (NCT of Delhi) [2025 NCDHC 6670]

6. Learned Government Advocate (Crl.Side), per contra, submitted that P.W.1 had not only identified the petitioner in the test



identification parade conducted, but also before the Trial Court; that the gold jewels which were stolen from the house of P.W.1 had also been seized from the petitioner and the jewels were also identified by P.W.1; that the minor contradictions in the evidence of P.W.1 and other witnesses would not render their evidence useless; that the Trial Court and the Appellate Court had rightly appreciated their evidence and therefore, there is no reason to set aside the judgment of conviction and sentence imposed on the petitioner.

7. As stated above, the prosecution had examined 14 witnesses. P.W.1 is the complainant from whom jewels were taken by the petitioner and other accused; P.W.2. is the husband of P.W.1; P.W.3 had seen the accused near the place of occurrence on the date of occurrence; P.W.4 was a witness to Observation and Seizure Mahazars, which were marked as Exs. P2 and P3; P.W.5 is the Pawn Broker, who had spoken about A7 pledging certain gold articles and the receipt was marked as Ex.P4; P.W.6 is a friend of A4, who had given his vehicle to A4 and it was used by him for committing the offence. P.W.7 is the Village Administrative Officer, who had attested the arrest, seizure and confessions of A4, A5 and A8; P.W.8 is



another attesting witness to the confessions and seizure made from A6 and A7. P.W.9 is the Judicial Magistrate, who conducted the test identification parade; P.W.10 is the fingerprint expert who certified that the fingerprints found at the house of P.W.1 matched with that of A1 to A3; P.W.s 11 and 12 are Police Constable and Sub Inspector of Police respectively, who assisted the Investigating Officer; P.W.13 is the Inspector of Police, who registered the FIR and P.W.14 is the officer, who completed the investigation.

8. From the above narration, it is clear that the prosecution seeks to prove the offence committed by the petitioner on the basis of the evidence of P.W.1, the victim, P.W.3, who had seen the petitioner and two other accused outside the house of the victim on the date of occurrence, P.W.10, fingerprint expert and P.W.9, Judicial Magistrate, who conducted the test identification parade.

9. It is not in dispute that the petitioner was identified by P.W.1 in the test identification parade as could be seen from the evidence of P.W.9. P.W.1 had identified the petitioner in the Court as well . The petitioner,



though claims that the seizure from him cannot be believed, there is nothing in the evidence that suggests that seizure from the petitioner has to be disbelieved . The jewels that were seized from the petitioner were identified by P.W.1. That apart, P.W.10, fingerprint expert had also confirmed the presence of fingerprint of the petitioner and A2 and A3 in the house of the victim P.W.1. Therefore, this Court is of the view that the prosecution has established its case that dacoity was committed in the house of P.W.1 and the petitioner was also involved in the said offence. There is no infirmity in the said finding recorded by the Trial Court and the Appellate Court. Further, it is seen that both the Trial Court and the Appellate Court had disbelieved the evidence of two defence witnesses examined by the petitioner. This Court finds no infirmity in the said finding also.

10. The question is whether the allegations, even if accepted to be true, would constitute the offence under Section 397 IPC. It is the case of the prosecution that a kitchen knife was used by A1/petitioner herein to threaten P.W.1. In order to attract the offence under Section 397 IPC, the accused must have either used a deadly weapon or attempted to cause death or grievous hurt to any person. In this case, admittedly no injuries were



caused to P.W.1. Apart from the fact that the petitioner had threatened P.W.1, there is nothing to suggest that any attempt was made to cause death or grievous hurt. What remains to be seen is whether the knife was used by the petitioner and whether it would qualify as a deadly weapon.

11. The Hon'ble Supreme Court in *Phool Kumar's case* cited supra had an occasion to consider the meaning of the word 'uses' in Section 397 IPC. The Hon'ble Supreme Court has held that the word 'uses' cannot be given a restricted meaning and if the accused is armed with a weapon and brandishes or displayed it to frighten the victim, it would fall within the meaning of 'uses'. There is no contrary view taken by the Hon'ble Supreme Court in respect of the meaning that has to be attached to the word 'uses' in Section 397 IPC.

12. As regards the question whether the kitchen knife would be termed as a deadly weapon, there are various view on this aspects. The Delhi High Court in *Sonu @ Shahnawaz vs State (Nct of Delhi)* reported in *2019 SCC Online Del 1183* held that irrespective of whether a knife is a kitchen knife, or a butcher knife, it would qualify as a deadly weapon for the



purposes of Section 397 of IPC. A learned Single Judge of this Court in **Raja's case** cited supra had held that any knife which is used for daily purposes cannot be considered a deadly weapon, though it may occasionally cause death. The relevant portion of the said judgment reads as follows:-

“3. ...As far as the weapon is concerned, the prosecution has produced a folding knife 20 cm. long. Many persons usually carry with them this kind of knife used for daily purposes. Such a knife, by no stretch of imagination, can be considered as a deadly weapon though occasionally it may cause death. A 'deadly weapon' is a weapon which usually is employed to causing death.”

13. In this case, the investigating Officer had admitted that it is only a kitchen knife. The accused did not intend to cause any injury on the victim. The view taken by this Court in **Raja's case** is binding. Therefore, from the nature of the weapon used and the conduct of the accused, it cannot be said that a deadly weapon was used by the petitioner. Hence, this Court is of the view that offence under Section 397 IPC would not be made out. However, the petitioner would be liable for the offence under Section 395 IPC and is found guilty of the said offence.



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14. Learned Government (Advocate), on instructions, would confirm that the petitioner was not involved in any similar offence either before or after the occurrence and that the only case registered against the petitioner after the occurrence was in Crime No. 4 of 2023 for the offence under Sections 294 (b) IPC and 323 IPC.

15. Considering the overall facts and circumstances, this Court is of the view that it would be just and reasonable to impose a sentence of 3 years rigorous imprisonment for the offence under Section 395 IPC. This Court is also inclined to confirm the sentence of simple imprisonment for a period of 3 years for the offence under Section 450 IPC. The conviction and sentence imposed on the petitioner for the offence under Section 341 IPC is confirmed.

16. With the above modification, the criminal revision stands partly allowed.

29.01.2026

Index : Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order



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Neutral Citation: Yes/No

Nv/Mac

SUNDER MOHAN,J.

Nv/Mac

To

1. The I Addl. District and Sessions Court,
Erode.
2. The Principal Assistant Sessions Court, Erode.
3. The Inspector of Police, Erode North,
Erode District.
4. The Public Prosecutor,
High Court, Madras.

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