



Crl.A(MD)Nos.489, 582 & 626 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.489, 582 & 626 of 2022

1.Crl.A(MD)No.489 of 2022:

Hemaraj

... Appellant/Accused No.2

Vs.

State represented by,
The Inspector of Police,
Viralimalai Police Station,
Pudukkottai District.
(Crime No.311 of 2020).

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records from the lower Court in S.C.No.10 of 2021 on the file of the learned Principal District and Sessions Judge, Pudukkottai and set aside the Judgment, dated 12.07.2022 by acquitting the accused and by allowing the appeal.



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For Appellant : Mr.G.Karuppasamy Pandian

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

2.Crl.A(MD)No.582 of 2022:

Nanthakumar ... Appellant/Accused No.3

Vs.

The State represented by,
The Inspector of Police,
Viralimalai Police Station,
Pudukkottai District.
(Crime No.311 of 2020).

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records pertaining to the conviction and sentence passed in S.C.No.10 of 2021 on the file of the learned Principal District and Sessions Judge, Pudukkottai, dated 12.07.2022 and set aside the same as illegal.

For Appellant : Mr.G.Balumahendran

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

3.Crl.A(MD)No.626 of 2022:

Murugan ... Appellant/Accused No.1



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Vs.

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State through,
The Inspector of Police,
Viralimalai Police Station,
Pudukkottai District.
(Crime No.311 of 2020).

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374 of Cr.P.C to call for the records connected to the Judgment in S.C.No.10 of 2021 on the file of the learned Principal District and Sessions Judge, Pudukkottai, dated 12.07.2022 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.A.Arun Prasadh
for Mr.M.Suresh

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

These appeals have been directed as against the Judgment passed in S.C.No.10 of 2021 on the file of the learned Principal District and Sessions Judge, Pudukkottai, dated 12.07.2022, thereby

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convicting the accused for the offences punishable under Section 394 r/w 397 of I.P.C.

2.The case of the prosecution is that on 25.05.2020 at about 03.00 p.m., the victim went to work at a private company and returned to her house in the company vehicle at about 11.20 p.m. She was dropped at the main road and while she was walking along the mud road from E.Mettupatti bus stop to her house, the accused arrived on a motorcycle bearing Registration No.TN-48-S-6522. At knife point, they robbed her of a pair of ear studs weighing 1 gram and 900 mg, a nose stud weighing 130 mg and a Redmi cellphone. They also threatened to kill her by showing a sword. Based on her complaint, the respondent registered an F.I.R in Crime No.311 of 2020 for the offences punishable under Sections 392, 394 and 397 of I.P.C. After completion of investigation, a final report was filed and the same was taken cognizance by the trial Court.



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3.In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.10 and marked Ex.P1 to P23. The prosecution also produced Material Objects M.O.1 to M.O.6. On the side of the accused, no witnesses were examined and Ex.D.1 was marked.

4.On perusal of oral and documentary evidence, the trial Court found A.1 and A.3 guilty of the offence punishable under Section 394 r/w 397 of I.P.C and A.2 guilty for the offence punishable under Section 394 of I.P.C. A.1 was sentenced to undergo life imprisonment and to pay a fine of Rs.5,00,000/-, in default, to undergo five years Simple Imprisonment for the offence punishable under Section 394 r/w 397 of I.P.C; A.2 was sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs. 5,00,000/-, in default, to undergo three years Simple Imprisonment for the offence punishable under Section 394 of I.P.C and A.3 was sentenced to undergo life imprisonment and to pay a fine of Rs.

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5,00,000/-, in default, to undergo five years Simple Imprisonment for the offence punishable under Section 394 r/w 397 of I.P.C. Aggrieved by the same, the present appeals have been preferred by the appellants.

5.The learned counsels appearing for the respective appellants submitted that after the occurrence, the victim went to a private hospital and made a statement that she was raped and robbed by four unknown persons. However, the respondent did not charge the accused with rape. The prosecutrix identified only three accused persons, which is contrary to the first document ie., the accident register. The prosecutrix identified the accused persons after seeing their photographs on social media and later identified them in the test identification parade on 19.06.2020. Therefore, the identification parade was staged by the prosecution to fix the appellants. The respondent did not take any steps to hide the identity of the accused until the identification parade took place and the pictures were

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published on social media. Further, the identification parade was conducted only 20 days after the arrest of the accused. Even according to the prosecutrix, she was raped and robbed by four persons, but the prosecution projected the case as a robbery by only three persons. The weight of the jewels also differs between the complaint and the recovery. Therefore, it is a fatal to the case of the prosecution and even then, the Trial Court mechanically convicted the appellants.

6.The alleged occurrence happened on 25.05.2020 at about 11.20 p.m., but the F.I.R was registered only on 26.05.2020 that too at about 08.00 p.m. Subsequently, on 27.05.2020 at about 12.10 p.m., the F.I.R was sent to the Court. The prosecution failed to explain the delay in registering the F.I.R and sending it to the Court, which creates doubt over the case of the prosecution. In fact, the victim initially went to the Government Hospital, Viralimalai and also to another private hospital in Viralimalai. However, the

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prosecution completely suppressed these facts, raising strong doubts about the very genesis of the prosecution case. Though the prosecutrix stated that she was raped and robbed by the appellants, she was not subjected to any medical examination. Therefore, it is fatal to the case of the prosecution.

7.The prosecution failed to prove that the victim was dropped by her company vehicle and that the alleged occurrence took place thereafter. The prosecutrix deposed as P.W.1, but did not mention the presence of P.W.2 and P.W.3 at the scene of the occurrence. Therefore, the evidence of P.W.1 is not corroborated by any witness. The testimonies of P.W.2 and P.W.3 are not trustworthy, as they deposed that after completing work in Trichy, they went to their native place, Mettupatti by bus. After alighting from the bus, they walked to their home, and it was then that they heard the noise made by the prosecutrix and went to the scene of crime. The alleged occurrence took place during the lockdown period due to the

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Covid-19 pandemic, during which buses were not operating. The prosecution failed to prove the same. The prosecution also examined P.W.5 to prove the recovery. P.W.5 is a stock witness and testimony of P.W.5 is not trustworthy. Therefore, overall, the prosecution failed to prove the case beyond a reasonable doubt and the benefit of doubt should go in favour of the appellants. Even then, the Trial Court, without considering the above facts, mechanically convicted the appellants.

8.Regarding the test identification parade, the learned counsel appearing for the appellants relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Gireesan Nair and others Vs. State of Kerala [2022 Live Law (SC) 955]***, in which the Hon'ble Supreme of India held as follows:

“42. This Court in Budhsen and Anr. v. State of UP35 , had directed that sufficient precautions have to be taken to ensure that the witnesses who are to participate in the TIP do not have an opportunity to see the accused



before the TIP is conducted. In Lal Singh v. State of U.P. (2012) 6 SCC 174, this Court had held that a trial would be adversely affected when the witnesses have had ample opportunity to see the accused before the identification parade is held. It was held that the prosecution should take precautions and establish before the court that right from the day of his arrest, the accused was kept “baparda” to rule out the possibility of his face being seen while in police custody. Later, in Lalli v. State of Rajasthan (2012) SCC Online Del 1746 and Maya Kaur Baldevsingh Sardar and Anr. v. State of Maharashtra (2007) 12 SCC 654, this Court has categorically held that where the accused has been shown to the witness or even his photograph has been shown by the investigating officer prior to a TIP, holding an identification parade in such facts and circumstances remains inconsequential. Another crucial decision was rendered by this Court in Shaikh Umar Ahmed Shaikh and Anr. v. State of Maharashtra (1998) 5 SCC 103, where it was held:

“8. But, the question arises: what value could be attached to the evidence of identity of accused by the witnesses in the Court when the accused were possibly shown to the witnesses before



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the identification parade in the police station. The Designated Court has already recorded a finding that there was strong possibility that the suspects were shown to the witnesses. Under such circumstances, when the accused were already shown to the witnesses, their identification in the Court by the witnesses was meaningless. The statement of witnesses in the Court identifying the accused in the Court lost all its value and could not be made the basis for recording conviction against the accused. The reliance of evidence of identification of the accused in the Court by PW 2 and PW 11 by the Designated Court, was an erroneous way of dealing with the evidence of identification of the accused in the Court by the two eyewitnesses and had caused failure of justice. Since conviction of the appellants have been recorded by the Designated Court on wholly unreliable evidence, the same deserves to be set aside.”

9.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that it is a case of robbery. All the appellants had committed very serious and heinous offence



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as against the victim. Though the appellants had committed gang rape on the prosecutrix, she, being a reserved lady, did not press for the charge of rape. She is a married woman and the mother of two children. Therefore, she does not want to face such an untoward incident. Though her statement was recorded in the accident register, as she was raped and robbed by the appellants, the respondent rightly charged A.1 and A.3 for the offence punishable under Section 394 r/w 397 of I.P.C and A.2 for the offence punishable under Section 394 of I.P.C. It is not at all fatal to the case of the prosecution. There was absolutely no delay in lodgment of the complaint. The occurrence itself took place on 25.05.2020 at about 11.20 p.m., and the victim was immediately brought to the hospital. Thereafter, on 26.05.2020 at about 02.00 p.m., she lodged the complaint. After the registration of the F.I.R, it was sent to the Court within 24 hours. Therefore, there was no delay either in the lodgment of the complaint or in sending the F.I.R to the Court.

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10.P.W.2 and P.W.3 went to the scene of crime after hearing the alarm raised by the prosecutrix and took the victim to the hospital. The evidence of P.W.1 is categorically corroborated by P.W. 2 and P.W.3. In fact, P.W.1 deposed about the presence of P.W.2 and P.W.3. Therefore, the prosecution proved the charge beyond any doubt and the Trial Court rightly convicted the appellants and it does not warrant any interference of this Court.

11.Heard the learned counsel appearing on either side and perused the materials available on record.

12.The prosecutrix deposed as P.W.1. She deposed that while she was proceeding to her house on the mud road, three unknown persons came there in a Motorcycle. Two of them jumped off the Motorcycle, armed with knives ie., A.1 and A.3, while A.2 remained seated on the motorcycle. A.1 pointed a big sword at her

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neck and threatened her with dire consequences. He robbed her of a pair of ear studs and a nose stud. They also stole her Redmi mobile phone. Immediately, she raised an alarm, at that time, P.W.2 and P.W.3 arrived with a torch light. They flashed the torch light on the faces of the accused and the prosecutrix noted their faces in the torch light. One of the eyewitnesses, who is a resident of E.Mettupatti and worked as a mason, deposed as P.W.2. He stated that after hearing the alarming voice of the prosecutrix, he went to the scene and saw that A.1 to A.3 were threatening the prosecutrix and robbing her jewels. After robbing her jewels, they fled away. On enquiry, the prosecutrix said that her cellphone and jewels had been stolen by them. Another eyewitness, P.W.3, corroborated the evidence of P.W.1 and P.W.2. He testified that he heard the alarming voice and went to the scene of crime, where he saw that the appellants standing and threatening the prosecutrix. He identified the appellants in the torchlight. The prosecution examined P.W.5 to prove the confession statements of the appellants. Their confession statement led to the

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recovery of jewels and the cellphone, which were produced as material objects before the Trial Court.

13.The learned counsels appearing for the appellants specifically contended that there was a delay in lodgment of the complaint. The occurrence took place on 25.05.2020 at about 11.20 p.m. Immediately, the prosecutrix was taken to hospital and was under trauma. The complaint was lodged on the next day i.e. 26.05.2020 at about 02.00 p.m., and the same was registered by the respondent in Crime No.311 of 2020 for the offences punishable under Sections 392, 394 and 397 of I.P.C.

14.The F.I.R was sent to the Court on 27.05.2020 within a period of 24 hours from the time of its registration. Therefore, there was absolutely no delay in lodgment of the complaint or sending the F.I.R to the Court. That apart, there is no reason to disbelieve the complaint or the registration of the F.I.R. The occurrence cannot be

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disputed at all, as P.W.1 to P.W.3 have all categorically deposed and corroborated each other. Immediately after the occurrence, the victim was taken to the hospital and was under mental trauma. Therefore, she made a statement to the doctor that there were four persons involved. After hearing the alarm of the victim, P.W.2 and P.W.3 came to the scene of crime. As a result, the prosecutrix initially stated that there were four persons who committed the offence. However, she later realized that there were three accused persons and categorically deposed about their specific overt act.

15.Regarding the test identification parade is concerned, the F.I.R was initially registered as against unknown persons, as the prosecutrix did not know their names. However, she identified their faces by the flash of the torchlight from P.W.2 and P.W.3. In fact, P.W.2 and P.W.3 were completely different persons and they are not known to each other and to P.W.1. Despite this, the test identification parade was conducted on 29.06.2020 and the said report was marked

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as Ex.P.21. P.W.1 admitted in her deposition that she had seen the photographs of the accused and came to know about their names through the newspaper.

16.The Hon'ble Supreme Court of India has repeatedly held that identification in Court is the primary evidence and identification before the identification parade is only corroborative evidence to test the memory of the witness. Merely because the identification parade was conducted belatedly or with some deficiencies, the evidence of the eyewitnesses cannot be thrown out in its entirety, if it otherwise inspires confidence. Therefore, the principles enunciated from the dictum laid down by the Hon'ble Supreme Court of India in several judgments are as follows:

- “The evidence of the witness in the court is the primary evidence and the identification in the parade is only the corroborative evidence.
- Identification parade can arise only when the accused persons



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are not previously known to the witnesses.

- Identification parade has to be conducted at the earliest possible opportunity.
- Merely because identification parade was not conducted or it was conducted with some defects it will not make the evidence of the witness defective and identification in the court can be the basis for conviction when the witness identifies for the first time in the court.
- There cannot be any straight jacket formula regarding test identification parade and it has to be decided on the facts of the case regarding desirability of the identification parade.
- The delay in conducting the identification parade may be fatal in some cases when the delay was not explained justifiably.”

Therefore, the contentions raised by the learned counsels appearing for the appellants cannot be countenanced and the judgment relied upon by them is not helpful to the case on hand.



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17.Further, though the prosecutrix made a statement before the Doctor who treated her that she was rapped and robbed by four unknown persons, she categorically deposed before the Court that she was robbed by three accused persons. As stated supra, the prosecutrix was under mental trauma at the time. Moreover, her husband is an illiterate person. In fact, during the cross-examination of P.W.2, the defense did not even suggest that the prosecutrix was mistaken about the number of persons, who committed the offence. Further, the F.I.R is not a substantive piece of evidence and it is merely a record of the first information. It is also not an exhaustive document that must contain contain all details. Only during the investigation, the Investigating Officer, after collecting materials and statements from the witnesses, came to the conclusion that there were only three accused persons. The First Information Report can be used for contradiction under Section 145 of the Indian Evidence Act or for corroboration under Section 157 of the Indian Evidence Act. The prosecutrix clearly deposed before the Court that she was

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rapped by three accused persons. Therefore, her complaint cannot be construed as false one without affording an opportunity in terms of Section 145 of the Indian Evidence Act to explain the circumstances under which it was made. As such, the contradiction claimed by the defense must be proven to impeach her testimony under Section 155 of the Indian Evidence Act.

18.In this regard, the Hon'ble Supreme Court of India held in the case of *Rajender Singh and Others Vs. State of Bihar [2000 (4) SCC 298]*, that unless and until the witness is cross examined, variations regarding the number of persons cannot be used by the accused as a contradiction.

19.After analyzing all the evidence and materials on record, the Trial Court held in a detailed manner and convicted the appellants. Therefore, it does not require any interference by this Court.

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20. Accordingly, the Trial Court rightly convicted A.1 and A.3 for the offence punishable under Section 394 r/w 397 of I.P.C and A.2 guilty for the offence punishable under Section 394 of I.P.C. There are absolutely no grounds to interfere with the judgment rendered by the Trial Court. Hence, the appeals fail and are dismissed.

[G.K.I.J.] & [R.P.J.]
07.01.2026

NCC : Yes/No
Index : Yes/No
ps

To

1. The Principal District and Sessions Judge,
Pudukkottai.

2. The The Inspector of Police,
Viralimalai Police Station,
Pudukkottai District.

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

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G.K. ILANTHIRAIYAN, J.
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R. POORNIMA, J.

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