

Crl.A(MD)Nos.1097 of 2023 & 720 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2026

CORAM:

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

**Crl.A(MD)No.1097 of 2023
and
Crl.A(MD)No.720 of 2024**

Crl.A(MD)No.1097 of 2023

Thangamalai

... Appellant/A2

Vs.

The State rep. by
The Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District.

In Cr.No.222 of 2011. ... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records from the lower Court and set aside the judgment passed by the learned Additional District and Sessions Court, Srivilliputhur in S.C.No.218 of 2011, dated 21.09.2023 by allowing this appeal.

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For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

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

Crl.A(MD)No.720 of 2024

Sembulingam ... Appellant/A1

Vs.

The State rep. by
The Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District.
In Cr.No.222 of 2011. ... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the entire records connected with the proceedings of the judgment of conviction passed by the learned Additional District and Sessions Judge, Srivilliputhur in S.C.No.218/2011, dated 21.09.2023 and set aside the same and acquit the appellant from all the charges.

For Appellant : Mr.G.Bhagavath Singh

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



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COMMON JUDGMENT

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

These appeals are directed as against the Judgment passed in S.C.No.218 of 2011, dated 21.09.2023, on the file of the learned Additional District and Sessions Judge, Srivilliputhur.

2. The case of the prosecution is that on 04.05.2011 at about 2.15 p.m., when the de-facto complainant came home for lunch, he found his mother lying on the floor in a pool of blood. He immediately raised an alarm and P.W.2 and P.W.3 came to the scene of occurrence and found that she was dead. She had sustained stab injuries on her neck, and the bureau had been broken open. It is further alleged a gold chain weighing 5 sovereigns and a gold biscuit weighing 20 grams were missing from the bureau, with a total value of about Rs.75,000/-.



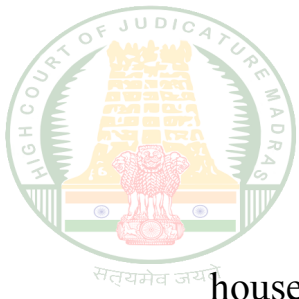
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3. Based on the complaint, an FIR was registered by the Inspector of Police, Thalavaipuram Police Station in Cr.No. 222 of 2011 for the offences punishable under Sections 302, 380 of IPC.

4. During the investigation, it was revealed that there are two accused persons, and both are friends. The sister of the second accused is married to one Kutty, who resides at Madasamy Kovil Street, Thalavaipuram. Therefore, the second accused very often visits her house. While he was visiting on 30.04.2011, he noticed the deceased's house and informed the first accused about the situation. Thereafter, they decided to commit theft in that house, which is located at Chettiarpatti Indra Nagar, Jeyasakthi Nagar. Subsequently, on 04.05.2011 at about 12:15 p.m., both of them came to the scene of occurrence on a bicycle belonging to the second accused, carrying a knife. After removing their shirts, they trespassed into the deceased's

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house and asked for water. When the deceased prevented them from entering the house, both accused pushed her down, and the first accused stabbed her on the neck. Thereafter, they broke open the bureau and looted a five-sovereign gold chain, a cover containing the medical records of the deceased's daughter-in-law, and gold biscuits weighing 20 grams. After completion of investigation, a final report was filed and the same has been taken cognizance by the trial Court. The trial Court framed the charge under Sections 449, 302 r/w 392 and 392 of IPC.

5. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.19 and marked Ex.P.1 to Ex.P.21. On the side of the accused, no witness was examined and no document was marked. The prosecution has produced Material Objects M.O.1 to M.O.16.



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6. On perusal of oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Sections 449, 302 and 392 of IPC. They were sentenced to undergo Life Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment for the offence punishable under Section 449 of IPC. They were further sentenced to undergo Life Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo three months simple imprisonment for the offence punishable under Section 302 of IPC. They were also sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo three months simple imprisonment. Aggrieved by the same, the appellants have preferred these present appeals.

7. The learned Senior Counsel appearing for the appellant in Crl.A. (MD) No. 1097 of 2023 and the learned counsel appearing for the appellant in Crl.A. (MD) No. 720 of



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2024 submitted that the prosecution had miserably failed to prove any of the charges, nevertheless, the trial Court mechanically convicted the accused. They further contended that the arrest of the accused and the recovery of the material objects are highly doubtful, and that the prosecution has failed to establish the same in accordance with law. This is a case based on circumstantial evidence, and therefore, the arrest of the accused is a vital aspect. Since the prosecution has failed to prove the arrest, the subsequent confession and recovery cannot be considered reliable. Furthermore, the prosecution has not proved the recovery of the blood-stained weapon and blood-stained clothes, as the chemical analysis report does not support the case of the prosecution. Additionally, the fingerprints do not match those of the accused. In fact, the fingerprints match those of the daughter-in-law of the deceased. Though the prosecution projected that P.W.4 to P.W.6 had lastly seen the accused near the scene of the crime,



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their statements were recorded on 05.05.2011 and were sent to the Court only on 07.09.2011. Therefore, all the eyewitnesses appear to have been planted by the prosecution. Even so, without properly considering the facts and circumstances of the case, the trial Court convicted the accused. Hence, the conviction and sentence imposed on the accused cannot be sustained and it is liable to be set aside.

8. On the other hand, the learned Additional Public Prosecutor appearing for the respondent submitted that P.W.1 lodged a complaint on 04.05.2011, which was marked as Ex.P1. Thereafter, the accused were arrested and remanded to judicial custody on 25.05.2011. Though the entire case is based on circumstantial evidence, after the arrest of the accused, they made voluntary confession statements in the presence of P.W.9, the Village Administrative Officer. He deposed clearly that, based on their confessions, M.O.Nos.1 and 2 were recovered



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and produced before the trial Court. Furthermore, P.W.4 and P.W.5 had lastly seen the accused near the house of the deceased, and their evidence was clearly corroborated by the testimony of P.W.6, who had also seen the accused entering the house of the deceased. Therefore, the prosecution has successfully proved the charges, and the trial Court rightly convicted the accused, which does not warrant any interference by this Court.

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

10. It is a case based on circumstantial evidence. There are two accused, both of them are friends. The complaint was lodged by P.W.1, the son of the deceased. On the date of the alleged occurrence, i.e., 04.05.2011, P.W.1 went for his avocation, and his wife went to the temple. At that time, his



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mother was the only person present in the house. On the same day, at about 12:15 p.m., when he came home to have lunch, he found the deceased lying on the floor in a pool of blood. He also noticed that the bureau had been broken open and that a gold chain weighing 5 sovereigns and a gold biscuit weighing 20 grams were missing. On 04.05.2011 at about 15:30 hours, he lodged a complaint, which was marked as Ex.P1. Soon before the occurrence, P.Ws.4 to 6 had last seen the accused. P.W.4 deposed that on 04.05.2011 at about 12:15 p.m., he had seen both the accused in front of the deceased's house, changing their T-shirts into shirts. He had also seen bloodstains on the T-shirt. Thereafter, he heard that the deceased had been murdered for gain. He also informed the presence of the accused in front of the deceased's house along with the deceased's husband. P.W.5 deposed that at 12:15 p.m. on 04.05.2011, he saw both the accused coming on their bicycles on Indra Nagar Street, carrying their T-shirts in their



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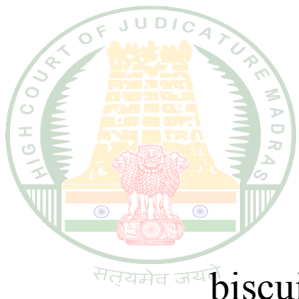
hands. P.W.5 also deposed as a witness for the recovery of a gold chain and a gold biscuit. P.W.6 deposed that on 04.05.2011, he saw the accused at about 12:00 p.m, they parked their cycle in front of the deceased's house and went inside. The next day, he saw in the newspaper that the deceased had been murdered for gain, for which, both the accused were arrested and remanded to judicial custody, and their statements were recorded by the police on 05.05.2011. P.W.4 and P.W.6 were examined by the investigating officer on 05.05.2011, however, their statements were sent to the Court only on 07.09.2011. Both accused were arrested and remanded to judicial custody on 25.05.2011. There is no explanation by the prosecution for the huge delay in sending the statements of the witnesses, who were the last persons to see the accused in front of the house of the deceased. They are the vital witness, and the entire prosecution case relies on them to establish the last seen theory. Regarding the recovery, according to the prosecution,



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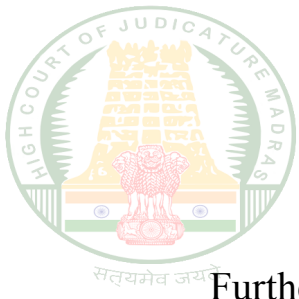
the accused after committing the theft of the gold chain and gold biscuit, the same were pledged with P.W.12 and received Rs.10,000/-. P.W.12 was examined by the respondent on 25.05.2011, but his statement was sent to the Court only on 07.09.2011. He deposed that both the accused are his close relatives. On 15.05.2011, at about 6.00 p.m., they came to his house and brought a gold chain and a gold biscuit to mortgage, asking for Rs.10,000/-. However, he refused to give any money and instructed them either to produce the receipt for the purchase of the gold biscuit or to bring his brother-in-law. The next day, the accused produced the purchase bill for the gold biscuit before P.W.12 and received Rs.10,000/-. On 25.05.2011, the respondent recovered the item in the presence of the Village Administrative Officer. Upon perusal of his deposition, it is revealed that he is a close relative, specifically the paternal uncle. Further, both accused are aged about 20 and 21 years and no prudent close relative would accept the pledge of a gold



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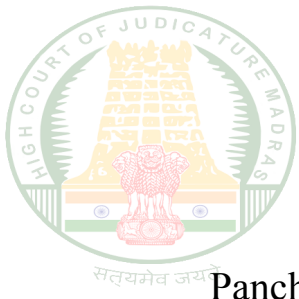
biscuit without the consent of the parents. Both the accused are close relatives of P.W.12. When the accused produced the gold biscuit, P.W.12 insisted on the receipt for the gold biscuit. He approached his brother-in-law, the father of the accused. The next day, the accused produced the bill, and upon receiving the same, P.W.12 paid Rs.10,000/-. The receipt was marked as Ex.P12. Upon perusal of Ex.P12, it was revealed that it stands in the name of P.W.1. Additionally, according to the prosecution's case, the accused had stolen the gold biscuit and gold chain, as well as the receipt and medical records of P.W.1's wife. P.W.12 is a planted witness for the following reasons:- No prudent brother-in-law would lend money by pledging a gold biscuit produced by the son of his brother-in-law and his aunt's son, fully aware of the circumstances involving their parents. Additionally, P.W.12 requested a receipt for the purchase of the gold biscuit and insisted on bringing either his brother-in-law or aunt before agreeing to lend the money.



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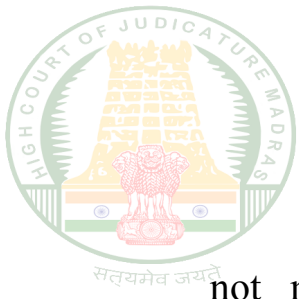
Furthermore, the statement of P.W.12 was recorded on 05.05.2011, but it only reached the Court on 07.09.2011. P.W. 12 gave a sum of Rs.10,000/- without even verifying the receipt, which was marked as Ex.P12, lending a sum of Rs.10,000/-. Ex.P12 stands in the name of P.W.1. Therefore, the prosecution, in order to strengthen their case and present it as a case of murder for gain, produced the gold biscuit and gold chain. However, the prosecution failed to mark the fingerprint reports, as they were not matched with the fingerprints of the accused. The fingerprints were found on the items tallid with the wife of P.W.1. It is also curious to note that the prosecution did not examine P.W.1's wife. At the time of the alleged occurrence, P.W.1 had gone to work, his wife had gone to the temple, and the deceased's husband had gone to the hospital. Therefore, the entire case presented by the prosecution appears to be fabricated in order to implicate the appellants as the accused. Regarding the recovery, the prosecution prepared the



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Panchanama, which were marked as Ex.P7 to Ex.P10. The Panchanamas were prepared on a white sheet, rather than in the proper form. This indicates that after identifying the accused, the prosecution cooked up the case, as if they murdered the deceased for gain. There is no concrete evidence linking the accused to the crime, especially since the fingerprints did not match those of the accused. Though the bloodstained T-shirts recovered from the accused, which were produced as M.Os.4 and 5, the prosecution failed to produce the serology report to match the bloodstained with the deceased. Therefore, the prosecution has completely failed to prove the charges against the accused. It is also seen that P.W.4 and P.W.5 were planted by the prosecution to establish the last seen theory, claiming to have seen the accused near the deceased's house. P.W.4 deposed that after hearing about the occurrence, he informed the husband of the deceased. However, the husband of the deceased was not examined before the trial Court, and he did



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not mention the incident to anyone. Furthermore, P.W.6 deposed that both the accused were arrested on the very next day of the occurrence, and he was examined on 05.05.2011 at the police station. No one supports the prosecution's case to substantiate the charges against the accused.

11. In view of the above, the conviction and sentence imposed on the appellants in S.C.No.218 of 2011, dated 21.09.2023, on the file of the Additional District and Sessions Court, Srivilliputhur cannot be sustained and are liable to be set aside.

12. In the result, this Criminal Appeals are allowed and the judgment made in S.C.No.218 of 2011, dated 21.09.2023, on the file of the Additional District and Sessions Court, Srivilliputhur, is hereby set aside and the appellants are acquitted of all the charges. The bail bond, if any, executed by



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the appellants shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellants. The appellants shall be set at liberty forthwith, if they are no longer required in connection with any other case.

[G.K.I.J.] & [R.P.J.,]
24.02.2026

NCC :Yes/No
Index :Yes/No
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To

1.The Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District.

2.The Additional District and Sessions Court,
Srivilliputhur.

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



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

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