



Crl.A.No.1281 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2025

PRONOUNCED ON : 07.01.2026

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1281 of 2022

S.Gogulan @ Gogul
S/o Subramani, Panai Kulam,
Pennagaram Taluk, Dharmapuri
District

Appellant/Accused

Vs

The State represented by,
The Inspector of Police,
Papparapatti Police Station,
Dharmapuri District.
(Crime No.160 of 2013)

Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the conviction imposed in the judgment dated 03.10.2022 made in S.C.No.70 of 2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri by allowing this Criminal Appeal.

For Appellant : Mr.E.Kannadsan
for M/s.R.Thulasi

For Respondent : Ms.J.R.Archana
Government Advocate (Crl. Side)
Assisted by
Ms.Harshana, T.



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JUDGMENT

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The appellant/accused in S.C.No.70 of 2016 was convicted by the trial Court by the judgment dated 03.10.2022 for the offences under Sections 448, 392 r/w 397 of I.P.C. and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 448 of I.P.C. and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment for the offences under Sections 392 r/w 397 of I.P.C. Aggrieved against the said conviction, the appellant/accused filed this appeal.

2. The case of the prosecution is that the de facto complainant/PW1 is a resident of Papparapatti village, Pennagaram Taluk and is running Shri Vinayaga Textiles shop in Papparapatti bazaar street. His daughter-in-law/PW2 was alone at home. On 27.07.2013, at about 3.00 p.m., the appellant trespassed into the house of PW1 on the guise of pledging some gold jewel. PW2 informed him that jewels were not pledged at home and he has to go to the shop of PW1. At that time, the appellant asked for water. When PW2 had gone to bring the water, the appellant followed her,



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brandished a knife, threatened her and asked her to hand over the jewels and cash available in the house. When PW2 resisted, the appellant pulled her and her face banged to the wall, thereafter inflicted a cut injury using the knife and removed Thali/M.O.1. PW2 raised alarm, shouted and the appellant locked the door from inside, thereafter finding neighbours gathering, he climbed the stairs and went up. PW2 fainted and fell down the floor. The neighbours on hearing the alarm sound, informed PW1/father-in-law and PW3/husband of the victim. PW3, who is the Head Master, informed the local residents to break open the window and enter the house. In the meanwhile, PW1 also reached there. Thereafter, the glass pane of the window was broken, the main door was broken open. PW3/husband and PW4/brother-in-law of the victim reached by then. All entered the house, found the victim lying in the floor with blood injuries. Thereafter, PW3 and PW7 took the injured to the Shanjaya hospital, Dharmapuri, where PW15 admitted her on the same day at about 4.30 p.m. and had given treatment. The victim initially took treatment in the Dharmapuri hospital, thereafter she was taken to Manipal Hospital in Bangalore, where PW10/Doctor had given further treatment.



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WEB COPY3. PW1 lodged a complaint/Ex.P1 to the respondent and F.I.R. registered at about 5.00 p.m. in Crime No.160 of 2013 for offence under Section 397 of I.P.C. PW11, the Inspector, who was in-charge of Papparapatti Police Station, received F.I.R./Ex.P8, visited the scene of occurrence, prepared observation mahazar, rough sketch in presence of witnesses, enquired the witnesses present in the scene of occurrence. In the scene of occurrence, he saw the broken window glasses, blood stains in the house leading upto the terrace of the house. From the blood stains it was noticed that the accused jumped to the next compound of Gowri Krishna Marriage Hall, thereafter the police had gone there and found one of the bathrooms was locked inside. Thereafter the accused was caught in presence of the witnesses. From the accused M.O.1/gold chain and M.O.11/paper cutting knife seized. Thereafter the accused remanded for judicial custody. In the scene of occurrence, a motor bike found abandoned, later verified and found that the vehicle belongs to the appellant's father and M.O.2 to M.O.10 seized from the motor bike. Further, the Investigating Officer informed the Fingerprint expert, photographers from police department to visit the scene to collect fingerprints. PW8 collected three chance prints from the scene of occurrence. PW9/police photographer took photographs of the scene. The



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WEB COPY blood stains collected to confirm the presence of the accused inside the

house. PW12 took up further investigation, who collected details of the abandoned motor bike, address and family particulars of the appellant from Village Administrative Officer/PW14. After collecting the material documents and recording statement of witnesses, charge sheet filed against the appellant for offence under Sections 448, 506(ii), 392 r/w 397 of I.P.C. In this case, PW16 is the another Investigating Officer.

4. During trial, on the side of the prosecution PW1 to PW16 examined, Exs.P1 to P15 marked and M.O.1 to M.O.11 produced. On the side of the defence, no witnesses examined and no documents marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

5. The learned counsel for the appellant submitted that in this case the appellant is an Engineering student. On 27.07.2013 at about 9.00 a.m., the appellant was riding his bike, at that time one Madhaiyan, Sub Inspector of Papparapatti Police was doing a road check. He stopped the appellant's vehicle, there was a wordy altercations arose between the appellant and the said Madhaiyan in front of the police station and exchange of heated words and there was push and pull and getting offended for police personnel, the



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appellant was detained in the police station. Thereafter, a false case projected against him as though the appellant involved in the offence of robbery. In this case, though several witnesses examined, except PW2/victim and eyewitnesses, none others had seen or identified the person involved in the occurrence proper. PW1 is the father-in-law of PW2 who states that he was informed by the neighbours about the alarm raised by her daughter-in-law. PW5, a neighbour informed PW1/father-in-law as well as PW3/husband of the victim. PW4/son-in-law of PW1 on hearing the shout had also come there. PW6/mother-in-law of PW2 came latter after the occurrence. PW7 a relative and a neighbour had come to the scene of occurrence. All these witnesses deposed that they heard the noise, came to the scene of occurrence, found the door locked and thereafter broke open the glass window and the main door, entered the house, saw PW2 lying with blood injuries and MO1/Thali found snatched. This is between 3.30 to 4.00 p.m. By 4.30 p.m. the victim/PW2 rushed to the hospital. PW15/Doctor examined PW2 at 4.30 p.m. admitted her, gave treatment and recorded injury sustained. PW2 took treatment till 28.07.2013. On 29.07.2013, PW2 was taken to Manipal Hospital, Bangalore and she took treatment till 01.08.2013. PW10 confirms the same.



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WEB COPY 6. He further submitted that PW2 after the incident proper, had not seen the appellant in this case. Three years thereafter, she identified the appellant in the dock. This Court as well as the Hon'ble Apex Court time and again held that in the absence of identification parade and for the first time identifying the accused in the dock cannot be a proper identification. The case projected is that M.O.2/motor bike found abandoned in front of the scene of occurrence and it was noticed thereafter. The Police examined the vehicle, seized M.O.2/bike and M.O.3 to M.O.10 articles found in the bike in presence of witnesses. The police entered the house, found blood stains leading to the terrace and from there to the next compound of Gowri Krishna Marriage Hall. PW11/Investigating Officer evidence is that following the blood stains, enquired Manager of marriage hall, found marriage hall was kept under lock for almost a week, and opened the marriage hall, inspected the hall, found one of the bathrooms locked from inside and the accused found thereafter he was arrested in this case, who produced M.O.1/Thali chain and M.O.11/paper cutting knife.

7. He further submitted that in this case, the observation mahazar, rough sketch, seizure of M.O.2 to M.O.10, arrest of the accused, his confession and



recovery of M.O.1 and M.O.11 all were done in presence of PW7 and one
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Boopathy. PW7/Shanmugam is none other than a relative of PW1. The chronology of the event would clearly show that entire thing was staged manner. The complaint/Ex.P1 was lodged by PW1 at about 17.00 hours, Seizure Mahazar/Ex.P2 is at about 18.00 hours, Observation Mahazar/Ex.P3 is at about 17.30 hours. The Arrest Memo/Ex.P10 is at about 19.15 hours, the confession statement/Ex.P11 is at 20.00 hours but the seizure of M.O.1 and M.O.11 prior to confession as recorded in seizure mahazar/Ex.P4 at 19.45 hours, which prove that the seizure precedes the confession. Hence, the recovery of M.O.1 and M.O.11 on the confession of the appellant cannot be taken in evidence. Added to it, PW7 version is that after the arrest, the appellant removed the Thali chain, which he was wearing in his neck and handed over to the police. The Investigating Officer/PW11 evidence is that accused had taken M.O.1 from the bathroom where he has hidden the same. In the confession statement/Ex.P11 it is recorded that the appellant produced the M.O.1. Hence, in this case the recovery is not proved. Added to it, the evidence of PW2 is that Thali chain was snatched from her neck with force and Thali chain was with gold coins and beads and Thali chain got snapped. PW2 when confronted with photograph of M.O.1 admits that M.O.1 is



without any breakage. Further the evidence of PW1, PW3 and PW6 is that
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PW2 was wearing Thali chain with gold coins and beads. Had the Thali chain was removed with force and snapped, naturally the beads and attachments could have scattered on the floor but nothing found.

8. He further submitted that PW11 admits that he had collected blood samples found in the scene of occurrence to confirm it with the blood group of the appellant but no serology report collected in this case. In this case PW7 the witness for all the mahazars and PW11 the investigating officer confirm that though the witnesses deposed that main door was broken, window glass pane broken and the floor was scattered with glass pieces and blood stains leading upto the terrace, nothing recorded in the observation mahazar/Ex.P4 and rough sketch/Ex.P9. Further, though witnesses state about presence of an abandoned motor bike near the scene of occurrence but there is no mention in any of the contemporary documents. Thus in this case the case projected by the prosecution is without any proper material and documents. No independent witnesses examined, the persons examined are relatives of PW1. In this case the identification of appellant by PW2 for the first time in the dock after three years of occurrence, without any identification parade is not proper identification and cannot be taken in evidence. The appellant is an



WEB COPY Engineering Graduate hailing from an ordinary family. The trial Court without considering all these aspects convicted the appellant. Hence, prayed for acquittal of the appellant.

9. The learned Government Advocate (Crl. Side) submitted that in this case the victim is a lady, she was alone at home. Her husband is a school Head Master and they are having two children, all had gone to school. On 27.07.2013 at about 3.00 p.m. the appellant knocked the door of the PW2/victim's house. Thereafter, he trespassed into the house, showed the knife, attempted to rob the jewels and valuables from the house. When the victim resisted she was pulled by force, her face smashed against the wall and further placing the knife on her neck removed the Thali chain from her neck. The victim suffered pain and raised alarm. The appellant locked the house from inside thereafter on seeing the gathering of neighbours and others, he climbed to the terrace and escaped from there. PW1/father-in-law of the victim informed about the alarm raised by the victim. PW1 had gone there. In the meanwhile, victim's husband/PW3 was also informed and PW4/brother-in-law residing nearby all gathered. Thereafter finding the door locked from inside, the glass window was broken, thereafter main door was forcibly opened. When they went inside they saw victim lying with blood injuries.



Later PW3 and PW7 took the victim to the Shanjaya hospital at Dharmapuri.
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PW15/Doctor admitted her and gave treatment. PW1 lodged a complaint to PW11, who received the complaint, registered F.I.R., visited the scene of occurrence, prepared observation mahazar, rough sketch in presence of witnesses, recorded the statement of witnesses present in the scene of occurrence. An abandoned motor bike was found near the scene of occurrence which was seized and from it articles recovered. Thereafter following the blood stains PW11/Investigating Officer went to the terrace which led to the next compound of Gowri Krishna marriage hall. PW11 had gone to the marriage hall, found the accused hiding in one of the bathrooms, thereafter the accused was arrested in presence of PW7, appellant gave a confession and from him Thali chain/MO1 and paper cutting knife/MO11 recovered.

10. PW11 was succeeded by the regular Inspector/PW12, who took up investigation, visited the hospital, recorded the statement of witnesses, confirmed the statement of the victim. Further the victim got admitted in Manipal hospital at Bangalore and took further treatment. PW10 is the Doctor who gave further treatment. The particulars of the bike/MO2 was collected from PW13 Regional Transport Office and it was found that the vehicle was



WEB COPY registered in the name of appellant's father. The VAO/PW14 was examined to

collect the family details of the accused. On collection of materials and recording of statement of witnesses, charge sheet filed in this case. In this case, PW2 is the victim, who clearly identified the appellant trespassed into the house and forcibly removed the Thali chain and escaped causing hurt to the victim. PW2 identified the appellant in dock and also identified her Thali/MO1. In this case, identification, arrest and recovery from the appellant all proved by the evidence of PW2 and PW7 before the trial Court. She further submitted that during trial, on the side of the prosecution PW1 to PW16 examined, Exs.P1 to P15 marked and M.O.1 to M.O.11 produced. On the side of the defence, no witnesses examined and no documents marked. The trial Court on the evidence of witnesses and materials produced had rightly convicted the appellant. Hence, prayed for dismissal of the appeal.

11. Considering the submissions made on either side and on perusal of the materials, it is seen that in this case PW2/victim is the only person who could identify the accused person, who trespassed and committed robbery by criminal force. All the other witnesses namely, PW1, PW3, PW4, PW5, PW6 and PW7 are relatives, not witnesses to occurrence proper. Out of these witnesses, PW1 is the father-in-law, PW6 is the mother-in-law, PW3 is the



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husband and PW4 is the brother-in-law of the victim, PW5 and PW7 are relatives to the victim. Apart from these witnesses, there are no independent witnesses in this case. The Fingerprint Expert had given his report/Ex.P6. From the report it is seen that the chance print C2 found on the iron door, developed and the same found to be identical with specimen fingerprint S2 of the appellant. The Fingerprint Expert/PW8 admits that the chance finger prints were obtained on 27.07.2013 but the specimen fingerprint of the appellant was obtained on 05.08.2013 and on the same day it was compared and the report/Ex.P6 was given. There is no material or evidence when and where the specimen fingerprint collected. Hence, the report/Ex.P6 has no relevance.

12. It is seen that in this case the case projected is that the appellant entered the house of the victim at about 3.00 p.m. and attempted to commit robbery by brandishing knife and also placing knife on the victim's neck, causing injury to her by dragging and pushing her face on the wall and the victim raised alarm and shouted which was heard by the neighbours namely, PW4, PW5, PW7 who alerted PW1 and PW3. They came to the scene, thereafter the window and door was broke open and found the victim lying with blood injuries and missing of her Thali chain/MO1. By 3.30 p.m. these



WEB COPY witnesses assembled near the scene of occurrence. By 4.30 p.m. PW3 and

PW7 took the victim to Shanjaya Hospital, where PW15/Doctor had given treatment to the victim. Ex.P14/Wound Certificate confirms that the victim was admitted in Shanjaya Hospital, Dharmapuri at 4.30 p.m. At that time the medical records confirms that the victim was in hospital at Dharmapuri from 27.07.2013 to 29.07.2013 and thereafter took further treatment at Manipal Hospital, Bangalore from 29.07.2013 to 01.08.2013 and PW10/Doctor confirmed the same.

13. With regard to other aspects of the investigation, after the complaint/Ex.P1 lodged by PW1 at about 5.00 p.m. on 27.07.2013, PW11 immediately came to the scene of occurrence, prepared observation mahazar, rough sketch in presence of PW7 and one Boopathy, at about 5.30 p.m. The Motor bike and other articles, namely, M.O.2 to M.O.10., as per Ex.P2/seizure mahazar prepared at about 6.00 p.m. The accused was found hiding in a bathroom in Gowri Krishna marriage hall and he was arrested. In this case, after his arrest, confession statement/Ex.P11 recorded at 8.00 p.m. In his confession, the disclosure is that the accused produced the Thali chain/M.O.1 and the paper cutting knife/M.O.11. The mahazar/Ex.P4 for recovery of MO1 and MO11 is at 7.45 p.m. preceding the confession. Hence,



WEB COPY this seizure and recovery is not pursuant to the confession/Ex.P11, which is at

a later point of time. Strangely in all these documents PW7 is the attesting witness. PW7 is a relative which is admitted by PW2 and PW3. The evidence of PW7 is that he and PW3 took PW2 to the hospital for treatment and thereafter he came back from the hospital at 5.00 p.m. and subsequently preparation of mahazars, arrest and recovery all done, which is highly doubtful.

14. The prosecution case is that inside the house of PW2, broken, glasses were found scattered in the floor, main door was forcibly broke open and thereafter PW1, PW3, PW4, PW5, PW6 and PW7 all entered the house, seen the blood stains in the bedroom and floor of the house and in the staircase and parapet wall leading to the next compound, which led to arrest of the accused. Strangely there is no recording of any blood stains in observation mahazar/Ex.P4 and Rough sketch/Ex.P9 or any of the documents, which is admitted by PW7 and PW11/Investigating Officer. PW11/Investigating Officer further goes one step and states that he collected blood stains from the house of the victim and made arrangements to collect blood samples from the accused to confirm presence of the accused in the scene of occurrence. Strangely nothing was sent to Serologist and no



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WEB COPY Serology Report collected in this case. Yet another contradiction is that

M.O.2/Motor bike was found abandoned in the scene of occurrence and was recovered through Seizure Mahazar/Ex.P2 and again PW7 is the witness.

There is no mention or reference about any abandoned bike in the scene of occurrence either in the complaint or in the observation mahazar or in any other document. PW7 and PW11 admit the same. Hence, recovery of M.O.2 to M.O.10 becomes doubtful. To link the appellant with the bike, the Motor Vehicle Inspector/PW13 examined and a report/Ex.P12 collected to show that Hero Honda bike registered in the name of appellant's father, yet another attempt made by examining VAO/PW14 and VAO Report/Ex.P13 to show appellant is son of Subramani and residing with his parents in Panaikulam village. The examination of PW13 and PW14 at best would confirm the ownership of the vehicle and the parentage and family of the appellant. That will nowhere confirm the presence of the appellant in the scene of occurrence and his involvement.

15. The most vital facts in this case is that PW2 is the only competent witness to speak about the occurrence proper. PW2 evidence is that the Thali chain/M.O.1 was snatched from her neck and the Thali Chain was with gold coins and beads, had the M.O.1/Thali chain snatched from neck and snapped



as per PW2, naturally the coins and beads will get scattered on the floor. But
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nothing found in the floor as per observation mahazar. When PW2 was confronted with M.O.1 during trial, showing M.O.1 infact in complete form and there was no damage, she was unable to give any answer. The recovery of M.O.1 itself is highly doubtful. The evidence of PW7 is that M.O.1 was removed by the appellant from his neck and handed over to PW11. The evidence of PW11 is that the appellant conceded MO1 inside the bathroom and thereafter produced and handed over to PW11. In the confession statement/Ex.P11 it is recorded that appellant produced M.O.1. Thus there is vital contradictions in the manner in which M.O.1 recovered. The recovery becomes doubtful.

16. Added to it, in this case the admitted position is that appellant a stranger, for the first time/PW2 seen the appellant, after three years in the Court and thereafter she identifies the appellant in the dock. There is no test identification parade conducted and no steps taken to confirm the identity of the appellant. In this case, the identity of the appellant is highly doubtful. Further it is seen from the records, all documents reached the Court with delay and no explanation given.



17.The Hon'ble Apex Court in the case of **Raj Kumar alias Bheema v. State of NCT of Delhi** reported in **2025 SCC OnLine SC 2465** held that

embellishment casts a serious doubt on the reliability of her dock identification and is suggestive of a clear attempt to fill critical lacunae in the prosecution case. In paragraph Nos.51 & 55, the Hon'ble Apex Court held as follows:

“51. It is trite that the evidence of an eye-witness must be of sterling quality and unimpeachable character. It should not only inspire the confidence of the Court but must also be of such a nature that is acceptable at its face value.

55. In assessing the credibility of a witness, the testimony must inspire confidence in the judicial mind, and omissions, improvements, or contradictions touching the core of the prosecution version inevitably undermine such assurance. This Court has consistently held that minor discrepancies are not fatal, but material improvements that go to the root of the matter essentially erode the credibility of the witness.”

18.In the present case, for the first time after three years, identifying a person in dock is not proper identification. Thus in the above case, there were several infirmities and contradictions, which the trial Court failed to



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WEB COPY consider. The evidence produced in the above case is in bits and pieces without connecting one with the other. In view of the above, the prosecution had failed to prove the case beyond all reasonable doubt.

19.Hence, this Court is inclined to set aside the conviction and sentence imposed on the appellant. Accordingly, the conviction and sentence imposed on the appellant in Sessions Case No.70 of 2016 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri dated 03.10.2022 is hereby set aside and the appellant is acquitted from all the charges. Fine amount paid if any, shall be refunded.

20.In the result, the Criminal Appeal stands allowed.

07.01.2026

Index : Yes / No

Neutral citation : Yes / No

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Speaking / Non-speaking order
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M.NIRMAL KUMAR, J.

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri.
2. The Inspector of Police,
Papparapatti Police Station,
Dharmapuri District
3. The Public Prosecutor,
High Court, Madras.

**Pre-delivery Judgment in
Crl.A.No.1281 of 2022**

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