



Crl.A.No.15 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

Criminal Appeal No.15 of 2018

1.Murugan

2.Gowtham

... Appellants/3rd and 4th Accused

Vs.

The State represented by,
The Inspector of Police, L&O,
R10 MGR Nagar Police Station,
Chennai – 600 083.

... Respondent/Complainant

Prayer : Appeal filed under Section 374 of Criminal Procedure Code praying to set aside the conviction and sentence imposed on the appellant in S.C.No.192 of 2015 on the file of the learned Sessions Judge, Mahila Court at Chennai dated 02.01.2018.

For Appellants : Mr.V.Krishnamoorthy

For Respondent : S.Raja Kumar
Additional Public Prosecutor



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JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This appeal has been preferred against the conviction and sentence made by the Sessions Judge, Mahila Court, (Mahalir Neethimandram), Chennai dated 02.01.2018 in S.C.No.192 of 2015 in P.R.C.No.37 of 2015 on the file of XXIII M.M., Saidapet, Chennai in respect of A3 and A4 who are the appellants herein for the offence punishable under Section 411 r/w. 34 I.P.C.

2. In fact, it is a case of murder, with regard to the said offence under Section 302 I.P.C., charge had been framed only against 1st and 2nd accused. Insofar as the 3rd, 4th and 5th accused are concerned, charge was framed for the offence punishable under Section 411 r/w. 34 I.P.C. The trial Court, in the judgment impugned, convicted and sentenced A1 and A2 for the offences under Section 450, 302 and 380 r/w. 34 I.P.C.

3. In respect of A3 and A4, the trial Court convicted these two appellants under Section 411 r/w. 34 I.P.C. Insofar as A5 is concerned, he



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has been found not guilty for the offence under Section 411 r/w. 34 I.P.C. accordingly, he has been acquitted.

4. As against the conviction and sentence for A1 and A2, the learned counsel appearing for the present appellants as well as the learned Additional Public Prosecutor stated that there has been no appeal.

5. Insofar as the present appeal is concerned, it is filed by the A3 and A4 as against the conviction and sentence of 6 months with fine of Rs.5000/- for the offence punishable under Section 411 r/w. 34 I.P.C.

6. Heard Mr.V.Krishnamoorthy, learned counsel appearing for the appellants and Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing for the respondent.

7. According to the prosecution, the charge made against the appellants/A3 and A4 along with A5 reads thus:

“நான்காவதாக -

மேற்படி சம்பவத்தின் தொடர்ச்சியாக, 1வது



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எதிரியாகிய நீர் மீதம் இருந்த ஒரு தாலி செயினை மதுராந்தகத்தில் உள்ள 4வது எதிரியாகிய உம்மிடம் அடகு வைக்கச் சென்ற போது நீர் அதனை திருட்டு நகை எனத் தெரிந்துகொண்டதாகவும், 4வது எதிரி சொன்னபடி 4வது எதிரியின் மகனான 5வது எதிரியாகிய நீரும், 4வது எதிரியின் கடையில் வேலை செய்யும் 3வது எதிரியாகிய நீரும் கூடி, 1வது எதிரியின் பெயருக்கு ரசீது போடாமல் ரவி என்ற பெயரில் ரூ.80,000/-க்கு அடகு வைப்பது போல ரசீது போட்டு 5வது எதிரியாகிய நீர் ரவி என அந்த ரசீதில் நீரே கையெழுத்திட்டு நகையை பெற்றுக் கொண்டுள்ளதாகவும் பின்னர் 4வது எதிரியாகிய நீர் 1வது எதிரியிடம் ரூ.60,000/-ஐ கொடுத்துள்ளதாகவும், 1வது எதிரியாகிய நீர் அதனை ஜாலியாக செலவு செய்துள்ளதாகவும், 4வது எதிரியாகிய நீர் 3 மற்றும் 5வது எதிரிகளின் உதவியுடன் 1வது எதிரி கொடுத்த நகை திருட்டு நகை என்று தெரிந்தும் அதனை அடகு வைக்க பெற்றுக் கொண்டுள்ளதால், 3 முதல் 5 எதிரிகளாகிய நீங்கள் இ.த.ச. 411 உ/இ. 34 பிரிவின் கீழ் விசாரிக்கத்தக்கதும், இந்நீதிமன்றத்தால் தண்டிக்கத்தக்கதுமான குற்றத்தை புரிந்துள்ளீர் என குற்றச்சாட்டு வனையப்பட்டுள்ளது.”

8. In order to prove the aforesaid charge against the three accused viz., A3, A4 and A5, the prosecution specifically depended the evidence of P.W.17 who is the Assistant in Revenue Department who stood as a confession witness for A1, A2 and A3. If we go through the evidence

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recorded by P.W.17 in his chief examination, he has stated before the trial

Court the following:

“... 1வது எதிரியின் ஒப்புதல் வாக்குமூலத்தில் உள்ள சாட்சியின் கையொப்பம் மட்டும் அ.த.சா.ஆ.9. மேற்படி இரண்டு எதிரிகளும் மதுராந்தகத்தில் உள்ள அடகு கடையில் நகையை அடமானம் வைத்திருப்பதாகவும் அடகு கடையை காண்பிப்பதாகவும் சொன்னார்கள். முதல் எதிரியின் ஒப்புதல் வாக்குமூலத்தில் அனுமதிக்கப்பட்ட பகுதி அ.த.சா.ஆ.10. என்னிடம் காண்பிக்கப்படும் ஒப்புதல் வாக்குமூலத்தில் கண்டுள்ளது என்னுடைய கையொப்பம் தான். சாட்சியிடம் இரண்டாவது எதிரியுடைய ஒப்புதல் வாக்குமூலம் காண்பிக்கப்பட்டது. 2வது எதிரியின் ஒப்புதல் வாக்குமூலத்தில் உள்ள சாட்சியின் கையொப்பம் மட்டும் அ.த.சா.ஆ.11. இரண்டாவது எதிரியின் ஒப்புதல் வாக்குமூலத்தில் அனுமதிக்கப்பட்ட பகுதி அ.த.சா.ஆ.10. என்னிடம் காண்பிக்கப்படும் ஒப்புதல் வாக்குமூலத்தில் கண்டுள்ளது என்னுடைய கையொப்பம் தான். சாட்சியிடம் இரண்டாவது எதிரியுடைய ஒப்புதல் வாக்குமூலம் காண்பிக்கப்பட்டது. 2வது எதிரியின் ஒப்புதல் வாக்குமூலத்தில் உள்ள சாட்சியின் கையொப்பம் மட்டும் அ.த.சா.ஆ.11. இரண்டாவது எதிரியின் ஒப்புதல் வாக்குமூலத்தில் அனுமதிக்கப்பட்ட பகுதி அ.த.சா.ஆ.12. ஆய்வாளர் மேற்படி ஆஜரில் உள்ள 1, 2 எதிரிகளையும் என்னையும், வி ஏ ஓ கதிரேசனையும் மதுராந்தகத்திற்கு கோத்தம்சந்த் அடகு கடைக்கு அழைத்து சென்றார். ஆஜரில் உள்ள 3வது எதிரியான முருகன் மேற்படி அடகு கடையில் இருந்தார். 3வது எதிரியிடம் போலீசாரிடம்



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வாக்குமூலம் கொடுத்தார். அதனை போலீசார் பதிவு செய்தார்கள். 3வது எதிரியின் ஒப்புதல் வாக்குமூலத்தில் உள்ள சாட்சியின் கையொப்பம் மட்டும் அ.த.சா.ஆ.13. ஆஜர் எதிரி முருகனிடம் இருந்து டி வி மாடல் செயின் ஒன்று தாலியுடன் கூடியது (சா.பொ.8) கைப்பற்றப்பட்டது. என்னிடம் காண்பிக்கப்படும் கைப்பற்றுதல் மகசரில் கண்டுள்ளது என்னுடைய கையொப்பம் தான். அந்த கைப்பற்றுதல் மகசர் அ.த.சா.ஆ.14. போலீசார் என்னை விசாரணை செய்தார்கள்.”

9. In his cross examination, the P.W.17 has stated the following:

“.... இதுவரை நான் எந்த வழக்கிலும் போலீசாருக்கு சாட்சி சொன்னதில்லை. தற்போது தான் முதல் முறையாக சாட்சியம் அளித்துள்ளேன். மேற்படி சா.பொ.8 அடமானம் வைக்கப்பட்டிருந்த நகை என்றால் ஆம். அடமானத்திற்கு ரசீதும் கொடுத்திருந்தார்கள் என்றால் ஆம். அடமானம் வைத்த ரசீதை போலீசார் பறிமுதல் செய்தார்கள். அடமானம் வைத்து வாங்குவது சட்டப்படி குற்றம் இல்லை என்றால் சரிதான்.”

10. This evidence has been mainly relied upon by the prosecution and the learned Judge of the trial Court has given the following discussion about the evidenciary value of the said witness:

“54. The evidence available on record also proves



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that the 4th accused is the receiver of the stolen property and the 3rd accused is the person available in the Pawn Broker Shop of the 4th accused from whom M.O.8 was recovered. However, I do not find any evidence against the 5th accused in order to connect him to the offence u/s.411 IPC. Hence, I conclude that the prosecution has proved the charges u/s. 450, 302 and 380 r/w. 34 IPC as against the 1st and 2nd accused and the charge u/s. 411 r/w. 34 IPC against the 3rd and 4th accused beyond reasonable doubt. Thus the point is answered accordingly.”

11. The trial Court also discussed the evidence recorded by P.W.26 who is Investigating Officer and the relevant portion of the order reads thus:

“44. Hence, the evidence of P.W.26 regarding the recovery of material objects remains unchallenged as against the accused 1 & 2. P.W.26 did not speak anything about the involvement of the 4th and 5th accused in his chief examination. But, in the cross examination, he has stated that 4th and 5th accused have been impleaded in this case since 4th accused has received the stolen articles and the 5th accused has given a Receipt in the name of one Ravi. But, the alleged Receipt given by him in the name of Ravi was not produced before the Court.



So, the evidence of P.W.26 regarding the recovery of stolen properties pertains to only 3rd and 4th accused and P.W.13.”

With the availability of these evidences, the trial Court has found the accused 3 and 4, who are the appellants, herein are guilty of offence punishable under Section 411 r/w. 34 I.P.C. and therefore such a conviction and sentence was awarded.

12. Mr.V.Krishnamoorthy, learned counsel appearing for the appellants has stated that the main charge that was made against these two appellants who stood as A3 and A4 as well as A5, according to the prosecution is that, all the three knowing well that a portion of the property was a stolen one and with that knowledge they received such a stolen property from A1 and A2 and in this context, it is the further case of the prosecution that, as against the receipt of such stolen goods, a receipt not in the name of A1 or A2 but in the name of one Ravi has been prepared and given and in that receipt, A5 has signed as if that he is the Ravi and keep the receipt with him.



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13. Explaining further this case of the prosecution, the learned counsel would contend that, if at all the three accused viz., A3, A4 and A5 had a knowledge about the stolen goods despite that knowledge they received the stolen goods for which a fake receipt having been prepared and was kept intact by A5, that receipt should have been recovered and marked as a document i.e. Exhibit before the trial Court. However, P.W.26 i.e. Investigating Officer has admitted that such an exhibit he has received but not marked.

14. The learned counsel also pointed out that, the A5 has been acquitted by the trial Court. Once the A5 is acquitted by the trial Court what is the link and knowledge with regard to the alleged offence punishable under Section 411 r/w. 34 I.P.C. as charged by the prosecution has no legs to stand and therefore, the conviction that has been given against A3 and A4 who are the appellants herein by the trial Court is without any evidence, he contended.

15. However, Mr.S.Raja Kumar, learned Additional Public Prosecutor



appearing for the respondent would canvass the point that, it is on the basis of the confession statement, where only admissible part of the A3 has been marked, the prosecution had gone to the place of A4, who is a Pawn Broker and his shop only the A3 was working and A5 is the son of A4. During the investigation it was revealed that the property i.e. M.O.8 which is a part of the stolen property was recovered only from A4. Against such property since there has been no proper explanation given by A4 and A3 had given his statement that, that was the stolen property brought by A1 and A2 and knowing well that all the three accused i.e. A3 to A5 decided to receive it. If that being so, it is a clear case where A3 to A5 joint together and decided to receive the M.O.8 knowing well that it is a stolen goods, thereby they committed the offence punishable under Section 411 r/w. 34 I.P.C.

16. The learned Additional Public Prosecutor would also submit that, merely because the A5 has been acquitted by the trial Court and the receipt in the name of Ravi prepared by A5 and recovered by the Investigating Officer (P.W.26) has not been marked as an exhibit that would not be a fatal to the prosecution case insofar as the charge made against A3 and A4 is concerned, he contended.



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17. We have considered the said arguments advanced by the learned counsel appearing for both sides and also have perused the records placed before this Court.

18. The very charge made against the A3 to A5 as extracted herein above only relates to the alleged receipt of stolen goods for the offence punishable under Section 411 r/w. 34 I.P.C. Therefore, first of all the prosecution must have established the case that the accused 3 to 5 had a knowledge that M.O.8 is a stolen goods and knowing well that it is a stolen goods they decided to receive it. In this context, the main contention of the prosecution side is that, in order to receive the M.O.8 i.e. the stolen goods, instead of giving receipt directly either to the A1 or A2 they made a receipt which is fake one in the name of one fictitious person viz. Ravi and this has been made by A5 with a concurrence and connivance of A3 and A4. It is also the prosecution case that, that receipt has been recovered by the prosecution as deposed by P.W.26 (Investigating Officer). However, that exhibit has not been marked before the Court admittedly. Since the said alleged fake receipt prepared in the name of Ravi is the main basis to come



to a conclusion that the accused A3 to A5 had an object intentionally to receive the stolen goods, the prosecution must have marked that exhibit that is the receipt in the name of Ravi.

19. In this context, what has been triggered in the mind of the learned Judge to acquit the A5, the same reason would apply equally to A3 and A4 also.

20. Merely on the basis of the alleged confession statement given by A3, the prosecution cannot built up their case and based on which the trial Court ought not to have come to a conclusion that the charge framed against A3 and A4 has been proved beyond reasonable doubt and therefore they could be found guilty for the said offence.

21. Even in the evidence of P.W.17, especially in the cross examination, he has stated that, he said in the affirmative whether the M.O.8 was a pledged goods and also he had stated to the question whether receipt had been given for the pledge, he said in the affirmative. He also stated that

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the police has recovered the receipt for the pledge.

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22. When that being the position, whether the A3 to A5 with or without the knowledge about M.O.8, that it is a stolen goods, have received the said goods, has not been clearly investigated and established by the prosecution.

23.This aspect has not been considered in proper perspective by the learned trial Court Judge and therefore his reasoning given in the judgment impugned to reach a conclusion that the A3 and A4 can be found guilty for the offence punishable under Section 411 r/w. Section 34 I.P.C. is not based on any evidence and therefore, we do not have any hesitation to hold that the finding and the conclusion arrived at by the trial Court in the judgment impugned in respect of these appellants who stood as A3 and A4 cannot be sustained and therefore it is to be interfered with.

24. In the result, the conviction and sentence made by the Sessions Judge, Mahila Court, (Mahalir Neethimandram), Chennai dated 02.01.2018 in S.C.No.192 of 2015 in P.R.C.No.37 of 2015 on the file of XXIII M.M.,

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Saidapet, Chennai is hereby set aside and the appeal is thus allowed. The fine amount of Rs.5000/- each by these appellants paid shall be refunded to the accused by the concerned authority.

[R.S.K. J.] [K.B. J.]

06.07.2023

Index : Yes

Speaking Order : No

Neutral Citation : No

Sgl

To

- 1.The Sessions Judge,
Mahila Court, (Mahalir Neethimandram),
Chennai.
- 2.The Inspector of Police (L&O),
R10 MGR Nagar Police Station,
Chennai – 600 083.
- 3.The Public Prosecutor,
High Court, Madras.

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And
K.KUMARESH BABU, J.

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