

Bail Slip:- The Appellants/ Accused 1 to 3 were directed to be released on bail in and by the order of this court dated 26.4.2007 made in CrI.M.P.No.1/07 in CrI.A.No.417/2007 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.417 of 2007

1.Sadishkumar
2.Gopa
3.Rangasamy

.. Appellants/Accused 1 to 3

v.

The State Rep. By
The Inspector of Police
Sirumugai Police station
Coimbatore District.
Cr.No.123 of 2006



.. Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the judgment of conviction and sentence dated 20.04.2006, made in S.C.No.368 of 2006 on the file of the learned Additional District Judge (Fast Tract Court NO.I), Coimbatore.

For Appellants : Mr.S.Kamadevan

For Respondent : Mr.V.Arul
Government Advocate (crl.side)

J U D G M E N T

The criminal appeal arises out of the judgment of conviction and sentence, dated 20.04.2006 made in S.C.No.368 of 2006 on the file of the learned Additional District Judge (Fast Tract Court

NO.I), Coimbatore, whereby the accused through charged under Sections 395 and 397 IPC, convicted for the offence under Section 392 IPC and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/- each in default, to undergo three months simple imprisonment. Against which, the present appeal has been filed.

2.The case of the prosecution is as follows:

(i) On the side of the prosecution, P.W.1 to P.W.9 were examined; Exs.P.1 to P.9 and M.O.1 to M.O.5 were marked.

(ii) P.W.1/Nagaraj, P.W.2/Murugesan, P.W.3/Marudhachalam, P.W.4/Arokiyam and P.W.5/Veerasamy were working as Security Officers in South India Viscose Company. On 02.06.2006 P.W.1 to P.W.5 were in security duty at South India Viscose Company. At about 1.00 p.m., when they were in patrol duty, they heard a noise from the northern side of the Factory. When they went to the place from where they heard the noise, they saw two vehicles, namely, TVS Star City and TVS XL Super motor cycle containing Aluminium Coils and Copper Coils and there were totally six accused. Immediately, P.W.1 called the other securities who were in the duty and out of the six accused, they caught two accused, namely, Sathishkumar/A1 and Gopal/A2. Then, P.W.1/Nagaraj went to Sirumugai Police Station at about 2.30 p.m. and lodged a complaint, which is marked as Ex.P.1 and handed over the two accused/A1 and A2 along with the material objects/M.O.1 to M.O.4.

(iii) P.W.7/Kanagaraj, Sub-Inspector of Police, Sirumugai Police Station, on receiving the complaint/Ex.P.1 from P.W.1/Nagaraj registered a case in Crime No.123/2006 under Section 397 IPC and prepared the printed FIR/Ex.P.8. Then, he sent the printed FIR/Ex.P.8 to P.W.8/Nithishkumar, Inspector of Police for investigation.

(iv) P.W.8/Nithishkumar, Inspector of Police, on receiving the FIR from P.W.7/Kanagaraj, Sub-Inspector of Police, went to the place of occurrence at about 3.45 p.m. and prepared the Observation Mahazar/Ex.P.2 and drew the rough sketch/Ex.P.9 in the presence of witnesses Arokiyam/P.W.4 and Veerasamy/P.W.5. Then, at about 6.00 p.m. he went to the Police Station, arrested the accused 1 and 2, namely, Sathishkumar/A1 and Gopal/A2 and recorded the confession statement of Sathishkumar/A1 in the presence of witnesses Arokiyam/P.W.4 and Veerasamy/P.W.5. Then, he seized TVS Star City/M.O.2, Aluminium Coils/M.O.1, TVS XL Super motor cycle/M.O.4 and Copper Coils/M.O.3 in Form No.95. Then, at about 7.15 p.m., on the basis of the information received, P.W.8/Nithishkumar went to Pungampalayam Vinayagar

Temple and arrested A3 to A6, namely, Rangasamy, Nikanth, Chandrakumar and Murugesan. Then, on the basis of the confession statement of A3/Rangasamy, which is marked as Ex.P.3, P.W.8 went to Nayakkar Thottam in the rear side of South India Viscose Company and seized M.O.5 to M.O.8 under the Seizure Mahazar Ex.P.4 to Ex.P.7 in the presence of witnesses Arokiyam/P.W.4 and Veerasamy/P.W.5. Then, he recorded the statement of P.W.1/Nagaraj, P.W.2/Murugesan, P.W.3/Marudachalam, P.W.4/Arokiyam and P.W.5/Veerasamy. Thereafter, he got transferred from Sirumugai Police Station.

(v) P.W.9/Vincent Paulraj, Inspector of Police, who was in additional in-charge of Sirumugai Police Station, on receiving the case files from P.W.8 took up the case for further investigation. He examined the witnesses P.W.6/Janarthanan, Sekar and Santhanasamy and concluded the investigation and filed the charge sheet against the accused under Sections 395 and 397 IPC.

3.The Trial Court placed the incriminating evidence before the accused under Section 313 of Cr.P.C. and the accused denied the same in toto. On the side of the defence, no oral evidence was examined and Ex.D.1 was marked. After considering the oral and documentary evidence, the trial Court convicted the Accused Nos.1 to 3 for the offence under Section 392 IPC and sentenced them as stated above and acquitted Accused Nos.4 to 6. Aggrieved over the same, the accused Nos.1 to 3/appellants have preferred this appeal.

4.Challenging the conviction and sentence passed by the trial Court under Section 392 IPC, the present appeal has been preferred by the accused/the appellants herein.

5.The learned counsel appearing for the appellant would submit that the P.W.1, P.W.2, P.W.4 and P.W.5 are the security personnels and they are interested witnesses and no independent witness has been examined. He would further submit that there is contradiction between the evidence of P.W.1, P.W.2, P.W.4 and P.W.5. Eventhough it was alleged by P.W.1 that the appellants and other accused have pelted stones but to prove that they sustained injuries, no Doctor was examined and the Accident Register copy has also not been marked. So, the ingredients of Section 392 IPC has not been made out if at all only Section 379 IPC. P.W.6/Janarthanan who has identified the material objects is not a competent person because he is working as Senior Engineer in the South India Viscose Company. But the Company is in the custody of the Official Liquidator and neither the

liquidator nor the person under his office was examined to identify the material objects. That factum has not been considered by the Trial Court. Further, the evidence of P.W.7/Kanagaraj Sub-Inspector of Police, who registered the case and P.W.8/Nithish Kumar, Investigating Officer, is not sufficient to fascinate the conviction of Accused Nos.1 to 3/appellants. He would further submit that A3 was not caught red handedly and that factum was also not considered by the Trial Court. He further submitted that since A4 to A6 were acquitted, the appellants/A1 to A3 ought to have been acquitted from the charges. Hence, he prayed for acquittal of the appellants.

6. Resisting the same, the learned Government Advocate (Crl. Side) would submit that there is no dispute that P.W.1, P.W.2, P.W.4 and P.W.5 are the securities and Accused Nos.1 and 2 were caught red-handed and on enquiry they mentioned the names of Accused Nos.3 to 6 and on the basis of confession statement of A3 under Ex.P.4, M.O.5 was recovered and that factum was rightly considered by the Trial Court. So, there is no reason for discarding the evidence of P.W.1, P.W.2, P.W.4 and P.W.5. He would submit that the Court cannot accept Parrot-like evidence. But, he fairly conceded that no Doctor was examined and Accident Register was not marked. He would further submit that offence under Section 380 IPC has been made out and not under Section 379 IPC. Hence, he prays for dismissal of the appeal.

7. Considered the submissions made on both sides and perused the typed set of papers.

8. On 02.06.2006, P.W.1 to P.W.5 were in security duty at South India Viscose Company and they were from Balaji Security Services. It is also admitted fact that the South India Viscose Company was under the custody of Official Liquidator. At about 1.30 p.m., P.W.1 to P.W.5 heard a noise from the northern side and P.W.1 witnessed that some people are committing theft of Copper and Aluminium Coils. Immediately, P.W.1 called the other securities and caught red-handed the Accused Nos.1 and 2 and seized M.O.1 to M.O.4. Then, P.W.1 took A1 and A2 to Sirumugai Police Station and gave a complaint before P.W.7 at 2.30 p.m. P.W.7 registered a case in Crime No.127 of 2006 under Section 397 IPC and prepared the printed FIR/Ex.P.8. The learned counsel appearing for the appellants would submit that there is contradiction between the oral evidence of P.W.1/Nagaraj, P.W.2/Murugesan, P.W.4/Arokiyam and P.W.5/Veerasamy, who are the alleged eye witnesses.

9. Now, this Court has to consider whether the contradiction has materially affected the case. But, admittedly A1 and A2 caught red-handed along with Material Objects/M.O.1 to M.O.4. There was some discrepancy but that will not be the reason for setting aside the conviction. The Hon'ble Apex Court has repeatedly held that the minor contradiction in the evidence of witnesses is not a base for setting aside the conviction. But in the facts of this case, A1 and A2 were caught red-handed and they were arrested by P.W.8 and M.O.1 to M.O.4 were seized under Ex.P.2. During the enquiry only, A1 and A2 disclosed the names of other accused. On that basis, A3 to A6 were arrested and on the basis of confession statement of A3, M.O.5 has been seized under Ex.P.4 in the presence of P.W.4. So, considering the evidence of P.W.4, there is no reason for discarding his evidence. Hence, the arguments advanced by the learned counsel appearing for the appellant that there is contradiction in the evidence of eye witness is fatal to the case of the prosecution, does not merit any acceptance, as already stated that minor contradiction in the evidence of eye witness is not a base for setting aside the conviction because in this case A1 and A2 were caught red handed.

10. The next point is in respect of injury sustained by P.W.1. It is true that P.W.1, in his evidence, has stated that when P.W.1 to P.W.5 has gone there, at that time, the persons who are standing behind the compound wall pelted stones and in which, P.W.1 and P.W.2 sustained contusions. But it is an admitted fact that they were neither treated as Out patient nor as Medico Legal Case. No Doctor was examined and no document was marked to show that P.W.1 and P.W.2 have sustained injury. In such circumstances, it is appropriate to incorporate Section 390 IPC.

390. Robbery

In all robbery there is either theft or extortion.

When theft is robbery. -Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily cause or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

11. Admittedly, the prosecution has miserably failed to prove that during the commission of theft P.W.1 and P.W.2 have sustained injury. So, the ingredients of Section 390 IPC has not been proved by the prosecution beyond reasonable doubt. But, in this case appellants/A1 to A3 has committed theft and M.O.1 to M.O.5 were seized. It is true that neither the Official Liquidator nor the Staff from the Official Liquidator's officer has been examined to prove that the material objects are belonging to the South India Viscose Company. But, whereas the Senior Engineer, P.W.6/Janarthanan has deposed who is a competent person who identified M.O.1, M.O.3 and M.O.5. So, the arguments advanced by the learned counsel appearing for the appellants that non-examination of Official Liquidator and their Staff is fatal, does not merit acceptance.

12. Now, the point to be decided is whether the offence under Section 379 IPC or Section 380 IPC has been made out. Admittedly, the material objects are within the compound wall of the Factory. P.W.6/Janarthanan has identified the same. Furthermore, it is pertinent to note that P.W.1 to P.W.5, who are the Securities and they are the competent person to prove the same and they have stated that the material objects, M.O.1, M.O.3 and M.O.5 are belonging to the Factory. It is true that the owner of M.O.2/TVS Star City and M.O.4/TVS XL Super has not been proved. But it is immaterial to prove the ownership whether M.O.2 and M.O.4 are belonging to the appellants. But they commit the theft and transfer the material objects M.O.1, M.O.3 and M.O.5 with the help of M.O.2 and M.O.4. So, the arguments advanced by the learned counsel appearing for the appellants that the ownership of M.O.2 and M.O.4 has not been proved is fatal, does not merit acceptance. In such circumstances, it is appropriate to incorporate Section 380 IPC.

380. Theft in dwelling house, etc.

Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

13. Admittedly, in this case, the properties were kept within the factory and it was covered by compound wall. In such circumstances, I am of the view that the appellants are guilty of offence under Section 380 IPC and not under Section 379 IPC. So, the Trial Court has rightly held that the appellants/A1 to A3

have committed the theft but wrongly convicted them under Section 392 IPC. Accordingly, the conviction and sentence under Section 392 IPC is hereby set aside and the appellants/A1 to A3 were convicted under Section 380 IPC.

14. In fine,

(i) The Criminal Appeal is modified.

(ii) The judgment of conviction and sentence dated 20.04.2006 in S.C.No.368 of 2006 on the file of the learned Additional District Judge (Fast Track Court NO.1), Coimbatore under Section 392 IPC is hereby set aside and the appellants/accused are convicted for the offence under Section 380 IPC and sentenced to undergo six months rigorous imprisonment and to pay a fine of Rs.2,000/-.

(iii) Bail bond, if any executed by the appellants/accused shall stand cancelled.

(iv) The trial Court is directed to secure the custody of the appellants/accused to undergo the remaining period of sentence.

Sd/-

Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

cse

To

1. Additional District Judge
(Fast Tract Court NO.I), Coimbatore.

2. The Inspector of Police
Sirumugai Police station
Coimbatore District.

3. The Public Prosecutor
High Court, Madras.

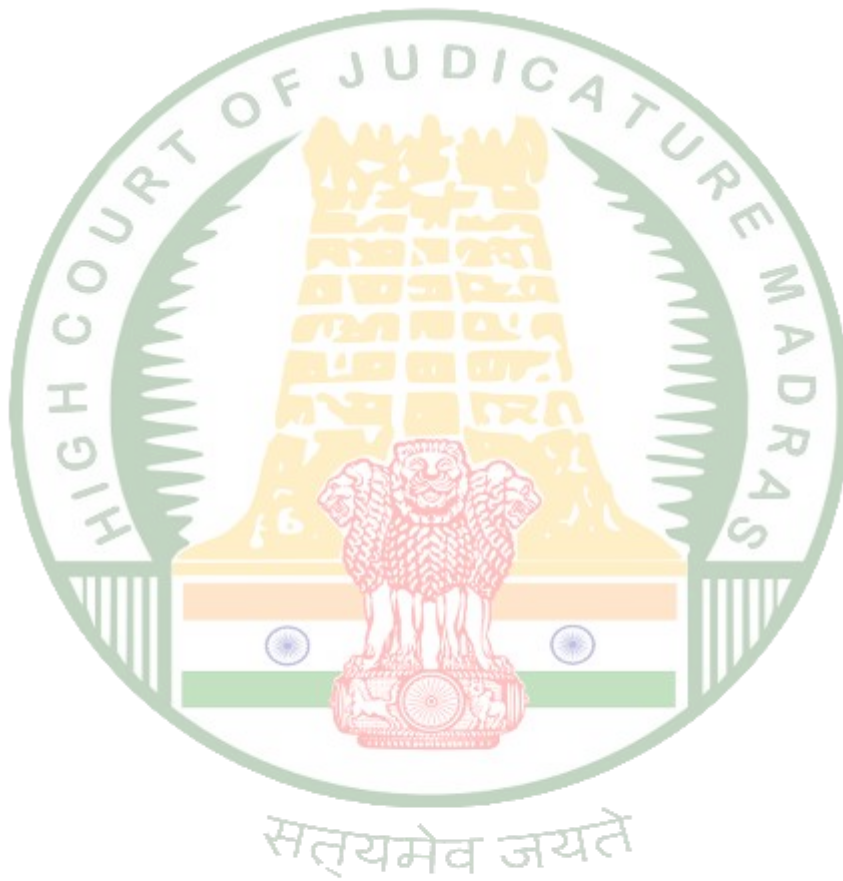
4. The Record Keeper
Criminal Section, High Court, Madras.

5. The Judicial Magistrate
Mettupalayam

6. The Chief Judicial Magistrate
Coimbatore (for information)

1 cc to Mr.S. Kamadevan, Advocate, sr. 4923
Criminal Appeal No.417 of 2007

AK (CO)
kk 13/2



WEB COPY