

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.A.No.800 of 2015

Ramesh alias Lecturer Ramesh .. Appellant/Accused

Versus

The State rep. by its
Inspector of Police
Pommedi Police Station
Dharmapuri District. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the conviction and sentence passed by the learned Sessions Judge [Fast Track Mahila Court], Dharmapuri in S.C.No.200 of 2014 on 19.11.2015.

For Appellant : Mr.M.V.Muralidharan

For Respondent : Mr.P.Govindarajan
Addl. Public Prosecutor

JUDGMENT

The sole accused in the Sessions Case No.200 of 2014 on the file of the learned Additional Sessions Judge [Fast Track Mahila Court], Dharmapuri is the appellant.

2. The trial court found him guilty under Section 394 r/w 397 IPC and sentenced him to undergo 7 years R.I and imposed a fine of Rs.1,000/- i/d to undergo one month S.I. He has paid the fine amount.

3. The case of the prosecution briefly runs as under:

(i) PW1-Alamelu is residing in Anwar Khan Thottam in Pommedi Village in Dharmapuri District. On 02.11.2012, at about 7 p.m an unidentified person barged into her house, snatched away her MO1 gold chain weighing 7 sovereigns and ran away. P.Ws.2 to 4 and 8, her neighbours ran to her rescue. She was having injury around her neck.

(ii) On 03.11.2012, at about 11 a.m., at the Pommedi Police Station, PW1 gave Ex.P1 complaint to PW9 -Thirugnanam, Sub-Inspector. He registered this case [Ex.P6 FIR]. He took up his investigation. He recorded her statement. He sent her to Government Hospital, Pappireddipatti. She had bruise on her neck [see Ex.P9 wound certificate]. PW9 prepared Ex.P2 Observation Mahazar in the presence of P.W.5 Ranjith and another person. He drew Ex.P7 rough sketch of the scene place. He examined other material witnesses and recorded their statement.

(iii) Thereafter, PW10 Murugesan, Inspector took up further investigation. On 01.04.2014, at the Pommedi Railway Station, PW10 arrested the accused in connection with Crime No.500 of 2012 under Section 397 I.P.C of Pommedi Police Station registered on the basis complaint by one Mohan. P.W.10 recorded Ex.P10 confessional statement of the accused in the presence of P.Ws.6 and 7, viz., Sakkaravel and Kamaraj. The accused produced MO1. It was seized by PW10 under Ex.P3 Mahazar in the presence of said witnesses. P.W.10 produced the accused and also the case-property to the jurisdiction Magistrate. The accused was remanded to judicial custody. Concluding his investigation PW10 filed the Final Report against him before the Court.

4. The learned Additional Sessions Judge [Fast Track Mahila Court] Dharmapuri completed the statutory formality and upon hearing both and on perusal of the case records, framed charges under Section 394 r/w 397 IPC and Section 323 IPC.

5. The accused pleaded not guilty to the charges.

6. To sustain the charges, prosecution examined P.Ws.1 to 10, marked Exs.P1 to P10 and exhibited MO1 gold chain.

7. When the accused was examined under Section 313 Cr.P.C. on the incriminating aspects appearing in the prosecution evidence, he denied the offences. He also stated that he did not give any confession as stated by the prosecution and on that date actually, he was elsewhere and this is a put up case against him. He did not let in any evidence.

8. The trial court mainly relying on the Section 27 Evidence Act Recovery, mainly on the evidence of PW10 Inspector-Murugesan, slapped 7 years R.I and also imposed fine on the accused.

9. The learned counsel for the appellant would contend that the slender evidence of the police witness, viz., P.W.10

with regard to his alleged disclosure statement of the accused Ex.P10 has not been spoken to by the recovery witnesses, viz., P.Ws.6 and 7. It is too hazardous to record a conviction on the sole testimony of the Investigation Officer, more particularly, when there are inconsistent evidence as regards the case property and even in the evidence of PW10 significant dent has been made during his cross examination.

10. The learned counsel for the appellant further contended that the Section 27 Evidence Act/Recovery is a weak piece of evidence. It becomes more weaker when the alleged recovery witnesses also not supported the recovery. Eschewing the same, what remains is suspicion, however it may be strong, it is not equivalent to legal proof.

11. On the other hand, the learned Additional Public Prosecutor would submit that MO1 has been recovered based on Ex.P10 disclosure statement of the accused. It is clinching. As regards ownership of MO1, PW1 has also clearly spoken. The accused is a total stranger to PW1. In the facts and circumstances, PW1 has not seen him nor had the opportunity had her glimpses in her memory, question of conducting test identification parade has become otiose. In such circumstances, based on the evidence adduced, the trial court has recorded the conviction and appropriately punished the accused.

12. I have anxiously considered the rival submissions, perused the judgment of the trial court and also the entire materials on record.

13. Now the question is whether the charge under Section 394 r/w 397 IPC framed as against the accused has been proved by the prosecution beyond all reasonable doubts?

14. PW1- belongs to Pommedi Village in Dharmapuri District. P.Ws.2 to 4 and 8 are her neighbours. Their evidence shows that on 02.11.2012 at about 7 p.m, while PW1 was alone in her house., somebody had robbed of her MO1 gold chain, while doing so, he had also caused injuries around her neck.

15. Now the question is who is that robberer? Is it the appellant? Is their incriminating evidence sufficient enough to sustain the charge against him?

16. There is no eye witness to the occurrence as neither PW1 nor any of her neighbours had seen the accused nor have had an imprint of him in their mind. Thus, in the facts and circumstances of this case, non conducting of the Test Identification Parade is understandable.

17. After PW9, PW10 Inspector continued the investigation. According to him, on 01.04.2014, at about 6.30 a.m, at the Pommedi Railway Station, in the presence of P.Ws.6 and 7 he has arrested the accused in connection with Crime No.500 of 2012 under Section 397 IPC registered by Pommedi Police based on the complaint of one Mohan. PW10 added that he had Ex.P10 confessional statement of the accused and in the presence of P.Ws.6 and 7 the accused has produced 50 sovereigns of jewel and MO1 gold chain and PW10 had seized under Ex.P8 Seizure Mahazar in the presence of P.Ws.6 and 7. This Section 27 Evidence Act Recovery evidence alone is available to implicate the accused in this case.

18. P.Ws.6 and 7 except owning their signatures in Ex.P8 and 10, have completely disowned the confessional statement as well as the seizure mahazar. They did not support the prosecution version of the recovery.

19. Now what remains is the evidence of P.W.10 Inspector -Murugesan. Section 27 Evidence Act has a limited exception to the general principles of prohibition against confession to police [See Section 25 of the Evidence Act]. So much of the information leading to the recovery of the fact alone is admissible under Section 27 of the Evidence Act. It must also be proved like any other fact.

20. In this case, in the cross examination of PW10, defence has made significant dent. PW10 is not able to pinpoint from which part of the said Railway station he has arrested him and where exactly the recovery was effected. On this aspect, PW10 gave a vague answer.

21. Further there is inherent improbability as regards the prosecution version of the accused, more particularly, with reference to MO1. As per the prosecution version, MO1 chain was snatched from PW1 from her neck and it was so violent she had injuries on her neck also [See Ex.P9]. However, MO1 chain is in tact. PW1 also admit that MO1 is a brand new gold chain.

22. Above all, now prosecution, hopes to succeed on the slender evidence of PW10's Section 27 Evidence Act/Recovery Evidence. As the recovery witnesses PWs.6 and 7 have turned hostile, only police evidence is available. This is a weak piece of evidence. It could be used to corroborate other piece of evidence. Besides that, we have already seen the nature of evidence of PW10 and the inherent improbability. Thus, this evidence of PW10 is quite insufficient to sustain a major charge like this. Based on such evidence it will be quite hazardous

to visit a person with penal consequences.

23. This Court is of the view that the prosecution has not established the charge framed as against the accused beyond all reasonable doubts.

24. In view of the foregoing, this Criminal Appeal is allowed. The conviction recorded under Section 394 r/w 397 IPC and the sentence awarded are set aside. The accused is acquitted. Fine amount shall be refunded. The Superintendent, Central Prison, Vellore shall release the accused from jail, if he is no longer required in any other case or proceedings.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif Cum Judicial Magistrate,
Pappireddypatti.
2. -do-Thro' The Chief Judicial Magistrate, Dharmapuri.
3. The Sessions Judge, (Fast Track Mahila Court), Dharmapuri.
4. -do-Thro' The Principal Sessions Judge, Dharmapuri.
5. The Superintendent, Central Prison, Vellore.
6. The Inspector of Police,
Pommedi Police Station, Dharmapuri District.
7. The District Collector,
Dharmapuri.
8. The Director General of Police,
Mylapore, Chennai.
9. The Public Prosecutor,
High Court, Madras.

+1 cc to M/s. M.V.Muralidaran, Advocate, sr.15209

Cr1.A.No.800 of 2015

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