

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.42 of 2009

Ramesh .. Appellant

Vs

State rep. By
Inspector of Police,
Mangalampattai Police Station,
Villupuram District. .. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment passed in S.C.No.233 of 2007 dated 28.04.2008 on the file of Additional District Sessions Court, Fast Track Court No.III, Viruthachalam.

For Appellant : Mr.T.Muruganantham

For Respondent : Mrs.M.F.Shobana,
Gov. Adv. (Crl. Side)

JUDGEMENT

The sole accused, in S.C.No.233 of 2007 on the file of the Additional District and Sessions Court (Fast Track Court No.III), Viruthachalam, is the appellant herein. He stood charged for the offences under Sections 394 and 397 IPC. By judgment dated

28.04.2008, the trial Court convicted and sentenced him to undergo Rigorous Imprisonment for 10 years for the offence under Section 394 IPC and to undergo Rigorous Imprisonment for 7 years for the offence under Section 397 IPC. The trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

P.W.1, in this case, is the victim. On 17.09.2006, at about 4.00 p.m., when she took her cattle for grazing in a sugarcane field, an unknown person caught hold of her and snatched away her Mangal Sudra with chain, and ear stud. When he was trying to remove the nose stud, since it was tight, he took a pen knife and cut her nose and snatched the nose stud and ran away. Thereafter, at 5.00 p.m., P.Ws.2 and 3, who are all working in the nearby fields, found P.W.1 unconscious, took her to the village. P.W.6, son of the victim, took her, to the Ulundurpet Private Hospital, where P.W.12, doctor, admitted her in the hospital and given treatment. Since the accused was not known to the victim and she also suffered a shock, she did not chose to give any complaint at that time. After some time, the accused was arrested in some other case, wherein he has admitted the guilt in the present case, which was also published in the newspaper. After seeing the newspaper, P.W.1 lodged a complaint

before the respondent police on 18.02.2007. P.W.13, Inspector of Police, attached to the respondent police, registered a case in Crime No.18 of 2007 and sent the same to the Court and also to the higher officials.

3. P.W.19, Inspector of Police, took up the case for investigation, proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P.3) and Rough Sketch (Ex.P.13) on 21.02.2007, and recorded the statement of the witnesses. Subsequently, an identification parade was also conducted on 26.02.2007. In the mean time, P.W.18, Inspector of Police, attached to the Virudhachalam Police Station, took the accused in police custody, as the accused was arrested in connection with some other similar case, and the accused has given a voluntary confession, based on the disclosure statement of the accused, P.W.18 recovered Mangal Sudra and a nose stud from the pawn broker shop. Subsequently he also recovered an ear stud from the sister's house of the accused. On 03.03.2007, P.W.1 identified the jewels. After completing the investigation, on 16.03.2007, he laid charge sheet against the accused for the offences under sections 341, 394 and 397 IPC.

4. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the

accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 13 documents were exhibited, besides 3 Material Objects.

5. Out of the said witnesses, P.W.1, is the victim in this case. According to her, on the date of occurrence, when she took the cattle for grazing in a sugarcane field, an unknown person came there and caught hold of her and snatched the Mangal Sudra, ear stud and nose stud and threw her near the well. Thereafter, she was admitted in the hospital and took treatment. Since the accused is unknown to P.W.1 and she was also in a shock, she did not chose to give complaint at that time. Thereafter, she came to know the accused through newspaper, then, she lodged a complaint before the respondent police.

6. P.Ws.2, 3 and 4, who are from the same village, according to them, while they were returning from the nearby agriculture field, at about 4.00 p.m., saw P.W.1 in an unconscious stage and took her in a bullock cart to the village. P.W.5 is the husband of P.W.1. According to him, since P.W.1 did not return home, they searched her and at that time, PWs.2 and 3 took her in a bullock cart, and P.W.1 informed him about the occurrence.

Immediately, he along with his son took her to a private hospital at Ulundurpet. After 5 months, they came to know through news paper that the accused has committed the crime. Immediately, they lodged a complaint before the respondent police. P.W.6 is the son of P.W.1 and P.W.5, who has also reiterated the evidence of P.W.5. P.W.7, who is brother of the victim, is a hearsay witness. P.W.8, is also a hearsay witness. P.W.9 is the doctor, working in the Government Hospital, Virudhachalam. According to him, on 23.02.2007, P.W.1 was taken to the hospital and he found a scar over the tip of her nose and there was a fracture on her shoulder. At that time, she told the doctor that 6 months ago one unknown person attacked her and also snatched her jewels. P.W.9 has issued Accident Register, Ex.P.2.

7. P.W.10, Village Administrative Officer, is a witness to the Observation Mahazar, Ex.P.3. P.W.11, who is from the same village, is also a hearsay evidence. P.W.12 is a doctor having clinic at Ulundurpet. According to him, on 17.09.2006, at about 9.00 p.m., P.W.1 was brought to his hospital for treatment and he examined her and found injury on her nose and also a fracture on her shoulder. At that time, P.W.1's son told him that somebody attacked his mother and snatched the gold jewels and she was taking treatment as an inpatient till 26.09.2006.

8. P.W.13 is the Inspector of Police, who registered the complaint. P.W.14, then Judicial Magistrate, Sankarapuram, recorded the statement of accused under Section 164 Cr.P.C. P.W.15 is the owner of the Pawn Broker shop. He has turned hostile. P.W.16 is the Judicial Magistrate, Viruthachalam, conducted identification parade. According to him, the identification parade was conducted properly and P.W.1 also identified the accused. P.W.17, Village Administrative Officer, Viruthachalam, is a witness to the confession given by the accused and also recovery of M.Os.1 to 3. P.W.18, Inspector of Police, Viruthachalam Police Station, took the accused under police custody in respect of an another crime committed by him, and based on the confession statement given by the accused, he recovered M.Os.1 to 3 from the pawn broker shop and the sister's house of the accused. P.W.19, Inspector of Police, has spoken about the investigation done by him and filing of final report in this case.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or marked any documents.

10. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first

paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

11. We have heard Mr.T.Muruganantham, learned counsel appearing for the appellant and Mrs.M.F.Shabona, learned Gov.Adv. (Crl.Side) appearing for the State and we have also perused the records carefully.

12. The learned counsel appearing for the appellant would submit that there is a long delay of more than 5 months in filing the First Information Report, which creates a doubt in the prosecution case. Apart from that, the recovery has also not been proved by the prosecution. Since the appellant/accused was arrested in some other offence, there is possibility of implication in the present case also. Hence, sought for the acquittal of the accused.

13. Per contra, the learned Government Advocate, Criminal Side, would submit that since the accused is a stranger and P.W.1 was under utter shock and being a rustic villager, she did not lodge the complaint immediately. Only after coming to know about the fact that the accused was involved in this case through news paper, immediately, she gave a complaint. Apart from that, based on the confession given by the accused, stolen articles have been recovered

and P.W.1 also properly identified the accused in the identification parade and hence the prosecution has clearly established the guilt of the accused. Thus, according to the learned Additional Public Prosecutor, there is no merit in the criminal appeal and the same is liable to be dismissed.

14. I have considered the rival submissions and perused the records carefully.

15. The first and foremost submission of the learned counsel for the appellant is that, the delay of more than 5 months in giving the First Information Report, creates a clear doubt regarding the prosecution case and even though the occurrence took place on 17.09.2006, the complaint has been lodged on 16.02.2007. Even though, there is a long delay in filing the First Information Report, the delay has been properly explained by the prosecution. It is the evidence of P.W.1 that when she took the cattle for grazing in the sugarcane field, one unknown person attacked her and snatched the Mangal Sudra and her ear stud. When he was trying to remove the nose stud, since it was tight, he cut the nose and snatched the nose stud, thereafter, he pushed P.W.1 near the well, and she suffered fracture in the shoulder, she was under utter shock. Immediately, the neighbours working in the nearby field took her to the village and

subsequently, she was admitted in the hospital and she has taken treatment for more than 10 days. P.W.1 a lady, being a rustic villager, she has not given any complaint. Thereafter, when the accused was arrested in a similar case, wherein, he has admitted the guilt in the present case and the same was also published in the newspaper. Then P.W.1 and her family members came to know that it is only this accused has committed the crime and immediately, she lodged a complaint. In the above circumstances, I am of the considered view that the delay has been properly explained by the prosecution. Therefore, the delay is not fatal to the prosecution case.

16. Since the accused has already been arrested in some other crime, P.W.18 took police custody of the accused, where he has voluntarily given a confession and based on the disclosure statement, the jewels belonging to P.W.1 have been recovered by P.W.18 under Mahazar, Ex.P.10. Since the stolen article was in possession of the accused and also recovered on the basis of his confession, which was also subsequently identified by P.W.1., it is the duty of the accused to explain the possession and in the absence of any such explanation, it is presumed under Section 114(a) of Indian Evidence Act and it is only this accused has stolen the jewels. Apart from that, P.W.1 has also identified the accused in the identification parade. In such circumstances, I am of the view that the prosecution has clearly

established the guilt of the accused and the trial court has rightly convicted the accused. So far as the sentence imposed on the accused is concerned, he seems to be a habitual offender and is involved in similar cases, and the sentence imposed by the trial Court is not excessive. In the above circumstances there is no merit in the appeal and the appeal is liable to be dismissed.

18. In the result, the Criminal Appeal is dismissed and the conviction and sentence imposed by the trial Court is confirmed.

16.12.2016

mrp

Index:Yes

To

1. The Additional District and Sessions Judge, No. III,
Viruthachalam.
2. The Public Prosecutor,
High Court, Madras.

V.BHARATHIDASAN.J.,

mrp

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