

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2016

(Judgment reserved on 09.08.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

CrI.A.No.418 of 2010

State represented by

The Assistant Commissioner of Police,
Central Crime Branch,
Egmore, Chennai (CCB X Crime No.201/2003)

... Appellant/Complainant.

Vs.

1. V.Karnan
2. D.Kanagaraj
3. Lakshmipathi
4. Jamaluddin

... Respondents/Accused.

Criminal Appeal filed under Section 378 Cr.P.C., against the judgment dated 23.12.2009 in C.C.No.20 of 2004 on the file of the III Additional Special Court, Chennai.

For appellant : Mr.P.Govindarajan, Addl.P.P.
For respondents 1 to 4 : Mr.N.R.Elango, Senior Counsel for
Mr.N.Raja Senthoo Pandian

JUDGMENT

This appeal is filed by the State against the judgment of acquittal of the respondents/A1 and A2 in C.C.No.20 of 2004, dated 23.12.2009 on the file of the III Additional Special Court, Chennai, whereby, the respondents/A1 and A2 were acquitted under Section 235(1) Cr.P.C. in respect of the charges levelled against them under Section 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act and Section 364 read with 34 IPC, 385 read with 34 IPC and Section 352 read with 34 IPC.

2. At the relevant point of time, A1 was the Inspector of Police and A-2 to A-4 were the Head Constables. It is the case of the prosecution that P.W.2 / de-facto complainant was running a pawn broker shop in No.262, Kamaraj Street, Villupuram. One Thirunendran is having a jewellery shop in NSC Bose Road, Chennai and since P.W.2 was a member of the Jewellery Shop Owners' Association in Villupuram, he claims to have purchased gold ingots from the said Thirunendran on two occasions. Apart

from this, P.W.2 had no other transaction. While so, on 12.12.2002 at about 6.15 a.m., when P.W.2 came out of the house and was waiting for collecting newspaper, a Tata Qualis car bearing Registration No.TN-05-D-1240 arrived and halted in front of the house of P.W.2. A2 and A3 who got down from the vehicle, asked P.W.2 to identify a person who was inside the vehicle. While he was looking inside the car to identify the person, he was pushed inside the said car and on seeing this, when P.W.2's wife questioned them, she was threatened to shut her mouth, otherwise, she was warned that she would also be taken along with P.W.2, her husband. Immediately, the said vehicle sped away to D2 Anna Salai Police Station. P.W.2 found two persons were sitting inside the car with handcuff and the other person who was sitting in the left front seat of the vehicle, claimed that he is the Inspector of Police. Apart from the above persons, there were five other persons in the vehicle. The Inspector of Police/A1, by pointing out the two persons who were with handcuff, enquired P.W.2 as to whether they were known to P.W.2. P.W.2 identified only Kumar who was the person who was working under the said Thirunendran. P.W.2 was beaten by the Police severely and threatened by A-1/Inspector of Police stating that as if P.W.2 has received gold ingots from the said Kumar, who returned the same. When P.W.2 denied receipt of the gold ingots, he was severely beaten by the accused persons in D2 Anna Salai Police Station. A1 demanded Rs.8 lakhs stating that if the money is not paid, a case will be registered against him as if he has purchased the theft gold ingots from the said Kumar, who was a staff of Thirunendran Jewellery merchant running jewellery shop in NSC Bose Road, Chennai. The said amount was later reduced to Rs.2.50 lakhs for P.W.2's release. On P.W.2's request, at about 4 p.m. on 12.12.2002, he was taken to a nearby telephone booth to make a phone call to his wife to arrange for Rs.2.50 lakhs and as his wife expressed her inability to arrange the said amount of Rs.2.50 lakhs, P.W.2 de-facto complainant wanted the accused persons to permit him to go to Villupuram for arranging the amount, for which, A1 Inspector of Police wanted P.W.2 to make arrangement for the amount in Chennai itself from known persons. Thereafter, P.W.2 was detained in D2 Police Station on the night and on the next day, i.e. on 13.12.2002, he contacted P.W.4 Harigopal and wanted him to come to the Police Station with Rs.2.50 lakhs by explaining the entire details to him. At about 5 p.m., P.W.4, with few others, came to the Police Station and convinced A1 Inspector of Police, who was paid Rs.50,000/- and when he asked for the balance amount, he assured A1 that he is taking responsibility to pay the balance amount of Rs.2 lakhs to him in 2 to 4 days. Thereafter, P.W.2 was released and after reaching Villupuram, P.W.2 arranged for selling the jewels of his wife for Rs.1 lakh and after obtaining a loan for Rs.1.50 lakhs, he came to Chennai on 18.12.2002 and paid the balance amount of Rs.2 lakhs to P.W.4 and requested him to take Rs.50,000/- for himself for the

earlier payment to A1 and to pay the balance amount Rs.2 lakhs to A1. On 18.12.2002, P.W.4 came to D2 Police Station and handed over the balance amount of Rs.2 lakhs to A1. At the time of handing over the money, P.W.4 was accompanied by P.W.5 Prabhakaran and one Balaraman. Later, in the month of March 2003, P.W.2 saw a news item in the newspaper which says that the then Commissioner of Police had warned that erring Inspectors of Police would be punished. On seeing this news item on 13.03.2003, P.W.2 lodged a complaint Ex.P-3 with the Commissioner of Police and he was directed to approach the Deputy Commissioner of Police, who in turn after collecting the information from P.W.2, sent him to Assistant Commissioner of Police, before whom, P.W.2 lodged Ex.P-3 complaint. P.W.26, the then Inspector of Police received the complaint, and registered a case in Crime No.201 of 2003 for the offences under Sections 363, 365, 384, 385, 323, 506 (Part-2), 120-B IPC and Sections 7, 13(1)(b) of the Prevention of Corruption Act. P.W.27 the then Assistant Commissioner of Police, CCB, Chennai took up the case for investigation and laid the charge sheet on 25.08.2004 before the jurisdictional Court. The case was taken on file by the trial Court in C.C.No.20 of 2004. During the course of trial, on the side of prosecution, P.Ws.1 to 27 were examined, Exs.P-1 to P-49 were marked and M.Os.1 to 7 were produced. When the accused persons were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. On the side of the defence/accused, D.Ws.1 to 5 were examined and Exs.D-1 to D-23 were marked. The trial Court, on an analysis of the oral and documentary evidence, acquitted the respondents/A1 to A4 of the charges framed against them. Challenging the acquittal, the State has preferred this appeal.

3. Learned Additional Public Prosecutor appearing for the appellant/State submitted that the trial Court, without assigning any valid reason, totally disbelieved the version of the prosecution witnesses and came to an erroneous conclusion that the occurrence as alleged by P.W.2 had not taken place and the respondents/accused have not committed any offence. In this regard, learned Additional Public Prosecutor, by inviting the attention of this Court to the evidence of P.W.2/de-facto complainant, submitted that P.W.2 has clearly narrated the incident that had taken place from the time of his abduction in the car till he reached Villupuram and he was released only on the next day after payment of the part amount of Rs.50,000/-. P.W.3 is none other than the wife of P.W.2 and her evidence clearly corroborates the version of P.W.2, stating that her husband P.W.2 was forcibly taken in Qualis Car on 12.12.2002 and he returned to Villupuram only after two days. The trial Court has not assigned any valid and convincing reason to reject the evidence of P.Ws.1 and 2. On the other hand, the trial Court erroneously considered the evidence of defence witnesses D.Ws.1 to 5, which did not have any nexus with the evidence of P.W.2,

thereby, the trial Court acquitted the respondents/accused. Learned Additional Public Prosecutor prayed for allowing the appeal and to convict the respondents/accused by setting aside the impugned judgment of acquittal of the trial Court.

4. Countering the above submissions, learned Senior Counsel appearing for the respondents/accused, by pointing out various infirmities and contradictions in the evidence of the prosecution witnesses, namely P.Ws.1 and 2, submitted that the trial Court has correctly rejected the evidence of P.Ws.1 and 2 as unreliable. That apart, learned Senior Counsel appearing for the respondents/accused persons submitted that P.Ws.4 and 5 who were examined to support the case of the prosecution to establish that P.W.2 was in the illegal custody of the accused persons and also with regard to the money demanded by A1, have turned hostile. Learned Senior Counsel appearing for the respondents/accused further submitted that according to the prosecution, A1 received the amount from P.W.2/de-facto complainant and paid the amount of Rs.50,000/- to his wife Manimegalai for paying the same to the owner of his house, P.W.20 as rental advance. But, P.W.20 in his cross-examination has deposed that during the course of investigation, since the Assistant Commissioner Chandrasekaran made a request to him, he pledged the jewels of his wife in Chennai Central Co-operative Society and handed over Rs.40,000/- to the Assistant Commissioner of Police Chandrasekaran. This creates a doubt in the case of the prosecution. Hence, the learned Senior Counsel submitted that P.W.20 was compelled to give cash of Rs.40,000/- to establish the case that the said amount, referable to bribe account, was received from P.W.2. This also creates a doubt in the case of the prosecution. Learned Senior Counsel, by inviting the attention of this Court to the evidence of prosecution witnesses, submitted that the prosecution has miserably failed to prove the case beyond reasonable doubt. Therefore, he prayed that no interference is necessary in the impugned judgment of acquittal passed by the trial Court.

5. I have given my anxious consideration to the submissions made by learned counsel on either side and perused the materials available on record.

6. It is the case of the prosecution that on 12.12.2002 at about 6.15 a.m., when P.W.2 / de-facto complainant came out of his house for collecting the newspaper and was waiting, he was forcibly taken by A1 and other accused persons who came in Tata Qualis car. At that time, P.W.2's wife, namely P.W.3, who came there, was threatened and was asked to shut her mouth, otherwise, she was also told that she will also be taken away in the car. Admittedly, it is the case of the prosecution that P.W.2 came back to Villupuram only after two days. But the evidence available on record shows that P.W.2 has not chosen to

give any complaint to the Police immediately with regard to the said occurrence. Similarly, P.W.3, the wife of P.W.2, has also not chosen to give any complaint till P.W.2 returned to Villupuram from Chennai. The normal conduct of a wife is that when her husband is taken by the Police forcibly, either she will complain the same to the higher officials or find out as to what had happened to her husband. But, in this case, no such thing had happened through the wife (P.W.3) of P.W.2.

7. Even according to the prosecution, the occurrence took place on 12.12.2002 and 13.12.2002. But the complaint was lodged by P.W.2 only after a period of three months, i.e on 13.03.2003. No explanation was given by the prosecution for this inordinate delay in lodging the complaint.

8. Further, according to P.W.2, he was said to have been accompanied by the accused from the Tata Qualis car from the gate of his house, but no independent witness was examined to corroborate such statement, except the interested witness, namely P.W.2's wife, i.e. P.W.3. In fact, P.W.3, in her cross-examination, admitted that there is a go-down nearby the left side of the house and adjacent to her house, there are about 50 houses in the Street. P.W.2's family was residing in the said place for nearly 27 years. Therefore, as contended by the learned Senior Counsel appearing for the respondents/accused, it is totally unbelievable that no person in the locality has witnessed the occurrence and the same creates a doubt in the case of the prosecution. Further, according to P.W.2, he was severely beaten by the Police while he was taken in the Qualis Car. He has stated in his chief examination that he was tortured and beaten by the Police Officers. If that is so, he ought to have taken medical treatment for the same, but there is no evidence to show that he has taken any medical treatment.

9. Further, P.W.3, who is the wife of P.W.2, admitted in her evidence in cross-examination that she did not take any action for 44 hours from the date of the alleged kidnapping of her husband P.W.2. She has further stated that her husband's brothers who were also there at the time of occurrence, were inside the house, but they did not give any Police complaint immediately. The conduct of P.W.3 in not lodging the complaint immediately after witnessing the alleged kidnap of her husband P.W.2, shows that her evidence as well as P.W.2's evidence, cannot be relied upon. The conduct of the parties cannot be accepted or appreciated to be in a prudent manner.

10. Further, according to P.W.2 / de-facto complainant, it is the case of the prosecution that P.W.2 received the jewels from Kumar, who was working in the jewellery shop of P.W.2 and only in connection with the same, accused persons, according to the prosecution, went to the place of occurrence and kidnapped

P.W.2 only with regard to the alleged receipt of jewels from Kumar. But, the said Kumar and Thirunendran, who are the material witnesses, have not been examined.

11. P.Ws.4 and 5 who are the material witnesses according to the prosecution, were the persons who witnessed the illegal confinement of P.W.2, but according to prosecution case, P.W.4 is the person who went to the Police Station and initially paid Rs.50,000/- and thereafter, on 18.12.2002, he went along with P.W.5 Prabhakaran. But, curiously, P.Ws.4 and 5 have turned hostile.

12. Another person who accompanied P.W.4 to give the money, namely Balaraman, has also not been examined by the prosecution. Further, according to P.W.6 Krishnamoorthy, who is a private driver, went along with the accused persons in the car on the date of occurrence and brought P.W.2 to the Police Station and has also turned hostile and has not supported the case of the prosecution.

13. Further, according to the case of the prosecution, P.W.2, on 12.12.2002, called his wife over phone and the said telephone call was made from Vijaya Hotel, in which, there is a STD Booth and the Manager of Vijaya Hotel which is situated near D2 Anna Salai Police, namely P.W.8, has also turned hostile.

14. Furthermore, it is the case of the prosecution that A1 received bribe of Rs.50,000/- from P.W.2, and A1 gave the amount to his wife for payment towards rental advance to P.W.20 and a sum of Rs.40,000/- was recovered. P.W.20 is his cross-examination admitted that on the request made by the Assistant Commissioner, he pledged jewels in Chennai Central Co-operative Society and handed over the money to the Assistant Commissioner of Police. Ex.P-20 is only a mahazar for recovering Rs.40,000/- in M.O.2 series, and in Ex.P-20, it is stated as follows:

"6. List of property seized or found with description: Rs.40,000/- (Rs.400 x 100) Rupees forty thousand only. Denomination vide over leaf and enclosures. One of the bundle's Bank cover leaf seal of "ரூபக்தவச்சலு நகை அடகு வட்டி கடை, காமராஜர் வீதி, விழுப்புரம் 605 602" is seen in Rs.100 note bearing No.3PN720211 Bundle."

15. The seal found in the bundle of Rs.100/- notes creates a doubt in the case of the prosecution, because, there is no possibility for having a seal bearing the name of P.W.2's shop, and as per the evidence of P.W.20, the said amount was received from the Chennai Central Co-operative Bank by pledging jewels. In fact, the Manager of the Chennai Central Co-operative Bank

was examined as D.W.1 and his evidence clearly shows that the alleged recovery of the amount is false.

16. As per the prosecution case, P.W.2 was confined illegally by the accused persons in D2 Anna Salai Police Station from 11.30 a.m. on 12.12.2002 to 8 p.m. on 13.12.2002 and in order to disprove the said fact, the Sentry Relief Register of the Police Station was produced before Court on the petition filed by the accused under Section 91 Cr.P.C. The Sentry Relief Register (Para Book) of D2 Anna Salai Police Station contains the details about the persons under the custody of the Police Station, weapons, instruments, other articles and belongings kept in the said Police Station and time and again, the corresponding entries will be made by the in-charge Police personnel in the said Register. D.W.3 Udhayakumar, who was the then Inspector of Police of D-1 Triplicane Police Station and who was the night duty Police Officer on 12.12.2002, was called and examined as defence witness in order to disprove the illegal confinement of P.W.2 as alleged by the prosecution.

17. Though P.W.10 the then Head Constable, has supported the case of the prosecution in his chief examination, he has admitted in his cross-examination that his statement was not recorded by the Police during the investigation. But, as contended by the learned Senior Counsel appearing for the respondents/accused, the statement under Section 161 Cr.P.C. said to have been recorded by P.W.7 is placed along with the charge sheet. This also creates a doubt in the case of the prosecution.

18. Therefore, the submission of the learned Senior Counsel appearing for the respondents that the documents would have been created subsequently, cannot be rejected.

19. With regard to interference of the findings of the trial Court in the judgment of acquittal, it is worthwhile to notice a decision of the Supreme Court reported in 2003 (12) SCC 606 (Ramanand Yadav Vs. Prabhu Nath Jha), wherein, the Apex Court has dealt with various decisions on the subject and held that though there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based, generally, the order of acquittal shall not be interfered with, because the presumption of innocence of the accused is further strengthened by acquittal and further that the judgment of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. The Apex Court further held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted and the paramount

consideration of the Court is to ensure that miscarriage of justice is prevented. The same view was taken by the Supreme Court in the decision reported in 2016 SCC Online SC 742 (Baby @ Sebastin and another Vs. Circle Inspector of Police, Adimaly), which is relied on by the learned Senior Counsel appearing for the respondents/accused.

20. In the case on hand, the view which is in favour of the respondents/accused has to be adopted for acquitting them. Further, P.Ws.1 and 2's evidence is not reliable, as it is not corroborated by independent witnesses and the other material witnesses have turned hostile. P.W.10 who supported the case of the prosecution in chief examination, admitted in his cross-examination about the contents of Exs.D-1 CD file, which disproves the prosecution case and supports the defence case.

21. Therefore, on a consideration of the entire evidence, this Court does not find any perversity in the impugned judgment of acquittal rendered by the trial Court. Hence, in my considered opinion, the findings rendered by the trial Court that the evidence of P.Ws.1 and 2 cannot be believed and relied upon, cannot be found fault with, as most of the material witnesses have turned hostile, thereby, not supporting the case of the prosecution. Thus, I do not find any valid reason to set aside the impugned judgment of acquittal passed by the trial Court.

22. Hence, the appeal is liable to be dismissed and accordingly, the same is dismissed.
cs

s/d-

Assistant Registrar (CS-III)

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1. The III Additional Special Judge, Chennai.
2. The Additional Public Prosecutor, High Court, Madras.
3. The Assistant Commissioner of Police,
Central Crime Branch,
Egmore, Chennai (CCB X Crime No.201/2003)
4. The Section Officer, Criminal Section (Records), High Court,
Madras.

+ 2 ccs to Mr.N.Raja Senthoo Pandian, Advocate SR 47918

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