

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.A.No.114 of 2016

Ravi @ Onankuttai Ravi

.. Appellant/Accused

Versus

The State of Tamil Nadu
Rep. by Inspector of Police,
Anaicut Police Station,
Vellore District.

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C.
against the judgment and conviction passed in S.C.No.229 of
2010 to order dated 30.05.2011 on the file of the Assistant
Sessions Judge-cum- Chief Judicial Magistrate, Vellore.

For Appellant : Mr.M.Satish Kumar

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

O R D E R

The sole accused in the Session Case in S.C.No.229
of 2010 on the file of the learned Assistant Sessions Judge,
Vellore is the appellant.

2. After trail, the learned Judge convicted and
sentenced him as under:

Conviction	Sentence
394 IPC	8 years RI and fine Rs.50,000/- i/d one year RI

3. The case of the prosecution in brief runs as
under:

(i) On 06.11.2008 at about 11.30a.m., P.W.1 was grazing
her cattle, near the burial ground in Eriputhur colony, in

Narayanapuram Village in Vellore District. At that time the accused robbed her jewels (M.Os.1 to 7) at knife point. He had also injured her. It was witnessed to by P.W.2. P.W.1 cried. P.Ws.6 and 7 her husband and son came.

(ii) On the same day, at the Anaicut police station, P.W.1, gave Ex.P1, complaint to P.W.14, SI of Police. He registered this case (Ex.P14) F.I.R. P.W.15, Inspector, Anaicut Police Station took up his investigation. He visited the scene place. In the presence of P.Ws.8 and 9, he prepared Ex.P2 Observation Mahazar. Drew Ex.P15 Rough Sketch of the scene place. At the Government hospital, Vellore, he had examined P.W.1 and recorded her statement. He has also examined other witnesses and recorded their statement.

(iii) On 3.2.2021, at about 6 a.m., near A.R.R. Theatre, in Ambur when P.W.13, Inspector, Ambur Police Station came, on suspension, he had arrested the accused. He recorded his confessional statement/Ex.P12 in the presence of P.Ws.10 and 11. In pursuance of that the accused had produced M.Os.1 to 7 gold items of P.W.1. P.W.13 has handed over the accused along with the case properties to P.W.15.

(iv) P.W.15, obtained Ex.P16 Wound certificate for P.W.1 from the Doctor. Concluding his investigation, he has filed the Final report as against the accused for offences under Sections 392, 394, 397 and 506(ii) of I.P.C. before the committal Court.

4. The Committal Magistrate after complying the requirement under Section 207 Cr.P.C. committed the case to the Court of Sessions, Vellore. The case was made over to the learned Assistant Sessions Judge, Vellore.

5. The Trial Court, upon hearing both sides and on consideration of the case-records framed charges under Section 392 r/w 397, 394, 506(ii) of IPC. as against the accused. The accused pleaded not guilty to the charges.

6. Prosecution examined P.Ws.1 to 15, marked Exs.P1 to P16 and exhibited M.Os.1 to 7.

7. When the accused was examined on the incriminating aspects appearing in the prosecution evidence under section 313 Cr.P.C., the accused denied the offences. He did not let in any defence evidence.

8. Appreciating the said evidence the Trial Court convicted and sentenced the accused as stated already.

9. Learned counsel for the appellant would contend that the accused was convicted de hors legal evidence. There was no fair trial. Throughout the Trial Court, the defence was

not given opportunity to defend the case. There was no effective defence much less no defence before the Trial Court. Even his petition under Section 311 Cr.P.C. filed by the defence counsel was also dismissed by the Trial Court. In the circumstances, the sentence imposed by the Trial Court is not a legal sentence.

10. Learned counsel for the appellant also submitted that even if the evidence as such is taken the charges levelled against the accused are not established beyond all reasonable doubts.

11. On the other hand the learned Additional Public Prosecutor would submit that evidence has been recorded in the presence of the accused. He was given opportunity. But, he did not avail it. The accused had adopted delaying tactics. In the circumstance, based on the evidence adduced, the Trial Court has convicted and sentenced him.

12. I have anxiously considered the rival submissions, perused the Trial Court's judgment and also perused the entire materials on record.

13. Totally 15 prosecution witnesses were examined. The main witnesses is P.W.1. There are many material witnesses. None of the witnesses were cross examined by the defence.

14. In its judgment, at paragraph 4, the Trial Court observed as under:

"Based on the evidence the accused were examined U/s.311 Cr.P.C. and the accused replied that the evidence are false and have witnesses to examine on his side. Later the defence side evidence is closed. The alleged accused was repeatedly taking time and did not make any effort to bring the counsel of his choice. He rejected the court attempt to appoint the legal aid Advocate to defend his case. The alleged accused repeatedly sought time for defence and filed application for adjournments. Perusal of the records show that one Mr.G.Ravi, Advocate, the accused counsel of choice filed the appearance of memo before this court. The accused was neither interested in progressing with the case nor interested in completing the case. At this stage the learned counsel for the accused appeared and filed petition U/s.311 Cr.P.C.. This application was strongly opposed by the learned Additional Public Prosecutor. This Court is of the view that this application

is belated one and in order to drag on the trial this petition is filed and therefore, this application is dismissed. Under compelling reason this Court closed the defence side and being under trial prison this Court pronounced the Judgment."

15. From the above, it is clear that when P.W.1 was examined she was not cross examined. Then, it was stated that his lawyer will cross examine her later. Other prosecution witnesses were also not cross examined. It is pertinent to note that subsequently, a learned counsel has filed a petition under Section 311 Cr.P.C. to recall the said P.Ws. for cross examination that was also dismissed by the Trial Court stating that it is his delaying tactics.

16. Thus, it is clear that the accused has been convicted based on the untested testimony of prosecution witnesses. The prosecution evidence has not been tested on the altar or touchstone of cross examination.

17. The learned counsel for the appellant would argue that there was no fair trial in the Trial Court. The accused was not accorded reasonable opportunity to defend himself. An opportunity sought for was also denied. So, the conviction and sentence out of such a trial is not valid in law.

18. No one is a born criminal. So, everyone is born innocent. He is presumed to be so. One's such right of presumption itself is his basic human right. It is Universal in nature. It is the duty of the prosecution to prove the charges levelled against the accused beyond all reasonable doubts.

19. As per Article 22(1) of the Constitution of India a person accused of an offence is constitutionally entitled to be defended by a lawyer of his choice. Whether he exercise it or not he is entitled to be defended by a lawyer. The right of defence is constitutionally guaranteed to an accused. The trial of a person without the assistance of a lawyer is as good as trying or hearing a deaf and dumb person. The said Constitutional right in Article 22(1) has also been reassured in Section 303 Cr.P.C.

20. Indigency, poverty are not reasons to dispense with the said Constitutional mandate to be defended by a lawyer. As per Article 39-A of Constitution of India it is the duty of the State to provide legal assistance to the needy more particularly, a person accused of an offence. This has also been reiterated in Section 304 Cr.P.C. Further, Criminal Rules of practice also stipulates engaging of a counsel to defend an accused involved in a serious offence.

If he has no means, the counsel should be engaged by the State at its cost to defend him.

21. In the administration of Criminal Justice, there are three stakeholders. Defence counsel, Public Prosecutor and the Court. All the three are having only one object that is 'due administration of criminal justice' and upholding of the Majesty of Justice. The theme of Criminal Justice system is that the guilty must be punished or dealt with appropriately and the innocent must be freed. This is the hallmark of justice and that is the motive of all the three stakeholders. The prosecution is to prosecute and not persecute the accused. The defence counsel is to defend the accused fearlessly, faithfully, to the best of his knowledge and professional ability and integrity. The said 'defence', includes right of cross examination. The said cross examination is not by a layman but by a lawyer, who has been described as a 'legal practitioner' in Article 22(1), Constitution of India. It is the bounden and pious and Constitutional duty of the Court to accord 'fair trial' to the accused. Any conviction recorded and sentence awarded when the trial is not a fair trial is invalid. The whole trial process will be vitiated. The product of such an order cannot stand the test of law.

22. As per Article 21 of the Constitution of India, no one shall be deprived of his 'life' and 'liberty' except by 'procedure' established by law. As per the decision of the Honourable Supreme Court in Union of India vs. Maneka Gandhi (1978 (1) SCC 248), the said 'procedure' must be 'fair', 'reasonable', 'not arbitrary', 'not unjust'. So, it calls for fairness in all criminal proceedings where the life or liberty of a person is in jeopardy.

23. As procedure by which a conviction was recorded and sentence was awarded to an accused, who is unaided by a lawyer is not a fair procedure and the trial will not be a fair trial. It will go against the principles laid down in Maneka Gandhi (supra).

24. Providing the assistance of a lawyer to an accused is actually a matter of 'access to justice'. Whether it is a trial Court or Appellate Court, or Review Court or Revisional Court, the role of the Court in ensuring an accused the legal assistance is 'sacred', 'moral', 'legal' and 'constitutional' duty and 'obligation' of every Criminal Court. This duty is not only concluded in the Committal Court, it extends to the Sessions Court and also to this Court. Even if the accused denies or refused legal assistance and if the charges are very serious or technical in nature still the Court can prevail upon him and engage a counsel to defend him. He shall not be denied, deprived the assistance of a legally trained brain.

Denial of assistance of a lawyer is denial of justice to an accused. It will be violative of the principles of natural justice also.

25. In a criminal proceedings, the Court should suo motu ask the accused of his willingness for legal assistance. It is not that the accused should ask first such help.

26. I am not making any sermons on the mountain. The dissertation so far made, found echoed in the following decisions of the Honourable Supreme Court:

- (1) Ramchud Mathur Waswa vs. State of Gujarat (1974 Crl.L.J. 999)
- (2) M.H.Hoskott vs. State of Maharashtra (1978(7) SCC 544;
- (3) In re: Hussainara Khatoon (1979(3) S.C.R. 532)
- (4) Khatri vs. State of Bihar & Ors. (A.I.R. 1981 SC 928)
- (5) Sukdas vs. Union Territory of Arunachal Pradesh (A.I.R. 1986 SC 991)
- (6) Rajoo @ Ramkhan vs. State of Madhya Pradesh (A.I.R. 2012 SC 3034)
- (7) Mhd. Hussain @ Julfikhar Ali vs. State of NCJ of Delhi (A.I.R. 2012 SCN 699)

27. The importance of an accused to be defended by a lawyer of his choice invited the attention of the Honourable Hon'ble Supreme Court very much. Recently, when Ajmal Gazab, a Pakistan national killed several innocent persons in Mumbai, the Supreme Court engaged Mr. Raju Ramachandran, a Senior Advocate to defend him. Only after that he was executed. Few days ago, when the case of certain adult accused involved in the infamous Delhi Nirbbaya case, who were sentenced to death by the Sessions Court which was confirmed by the Delhi High Court came before the Honourable Supreme Court, the Honourable Court feeling there should be effective defence/legal assistance to them appointed. Raju Ramachandran and Sanjay Hegde, Senior Advocates to defend them. But, the case before us is worse than Nirbbaya case because in Nirbbaya case in the Sessions Court and in the High Court defence lawyers assisted the accused but in our case, no legal assistance was provided to the accused in the Sessions Court.

28. From the impugned judgment, it is seen that the learned Assistant Sessions Judge has denied legal assistance to the accused. He did not raise even his little finger to

provide him a defence counsel. The disturbing aspect is even the petition filed under Section 311 Cr.P.C. itself was dismissed by the Trial Court. The Trial Court not even posed a question to the accused whether he is engaging a counsel or he has means to engage a counsel to defend him. Thus, the trial has been conducted in breach of the constitutional obligation in Articles 21, 22(1), 39-A, Constitution of India and the statutory obligations in Sections 303, 304 Cr.P.C. and the principles laid down in Maneka Gandhi (supra). So, the conviction and sentence must go. In the circumstances, the case has to be re-tried. Opportunity for cross-examination by a lawyer must be provided to the accused.

29. The Trial Court will enquire whether the accused is engaging a defence counsel of his choice at his expenses if he need legal assistance, the Trial Court shall engage a defence counsel nominated by the Legal Services Authority.

30. In view of the foregoing it is ordered as under:

- (i) This appeal is allowed
- (ii) The conviction and sentence are set aside.
- (iii) The case in S.C. No.229 of 2010 is remanded back to the learned Assistance Sessions Judge, Vellore for fresh disposal according to law.
- (iv) The Trial Court will recall the witnesses for the cross examination of the defence counsel.
- (v) Within one month from the date of engaging the defence counsel, either by the accused or by the Legal Services Authority, the Trial Court shall complete the trial and dispose of the case.
- (vi) The Trial Court also will conduct the trial on day today basis giving reasonable opportunity to the prosecution and the defence.
- (vii) In case, after retrial if there is conviction and sentence, the period before, during and after the earlier trial and retrial shall be set-off under Section 428 Cr.P.C.
- (viii) The accused is at liberty to move the learned Principle Sessions Judge, Vellore for bail and when a bail petition is filed, the learned Principle Sessions Judge will consider the same at an early date and dispose it of according to law.

31. Before parting with this judgment, this Court appreciates Mr.M.Satishkumar, who has put in lot of efforts in

defending the accused/appellant. Though he is young but not so in his work. Practically, he has become the defender of the rights of the accused. He deserves rich commendation. He must keep up his this spirit. Our wish is more and more Sathishkumars should emerge and render legal assistance to those in distress pro-bono also.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

smi/vaan

To

1. The Principle Sessions Judge,
Vellore.
2. The Assistant Sessions Judge,
Vellore.
3. The Inspector of Police,
Anaicut Police Station,
Vellore District.
- 4.The Superintendent,
Central Prison, Vellore, Vellore District.
5. The Judicial Magistrate No.V, Vellore.
6. Through The Chief Judicial Magistrate, Vellore.
7. The District Collector, Vellore.
8. The Director General of Police,
Mylapore, Chennai 4. सत्यमेव जयते
9. The Public Prosecutor,
High Court,
Madras.
10. The Section Officer,
Criminal Section,
High Court,
Madras.

Cr1.A.No.114 of 2016

pvs co
kra 23.05.2016