

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 11.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Cr1.A.No.255 of 2013

Anbu

... Appellant/2nd Accused

Vs.

State by the Inspector of Police,
Valathi Police Station,
Cuddalore District
(Crime No.229 of 2004)

... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 24.07.2006 passed by the
Additional District and Sessions Judge, Fast Track Court,
No.II, Tindivanam, in S.C.No.211 of 2005.

For Appellant : Mr.V.Paarthiban

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

The appellant is the second accused in Sessions Case
No.211 of 2005, on the file of the learned Additional Sessions
Judge, Fast Track Court, No.II, Dindivanam. Including the
appellant, there were a total number of six accused. The
trial Court framed as many as six charges against the accused
as detailed below:

Sl.No	Charges (Section of law)	accused
1.	U/s.120-B of the Indian Penal Code	A1 to A6
2.	U/s.452 of the Indian Penal Code	A1 and A5
3.	U/s.395 of the Indian Penal Code	A1 to A5
4.	U/s.396 of the Indian Penal Code	A1 to A5
5.	U/s.397 of the Indian Penal Code	A1 and A3
6.	U/s.402 of the Indian Penal Code	A6

By judgement dated 24.7.2006, the trial Court convicted the accused 1 to 4 alone and sentenced them as follows:

Sl.No.	Rank of accused	Conviction	sentence
1.	A1 to A4	U/s.452 IPC	rigorous imprisonment for five years each with fine of Rs.1000/-, in default, simple imprisonment for one year each.
2.	A1 and A4	U/s.395 IPC U/s.396 IPC	rigorous imprisonment for ten years each with fine of Rs.2000/- each, in default, RI for one year each. Imprisonment for life each with fine of Rs.2000/- each, in default, RI for one year each
3.	A1	U/s.397 IPC	Rigorous Imprisonment for seven years
4.	A3	U/s.323 IPC	Rigorous Imprisonment for one year

The sentences imposed against A1 to A4 were ordered to run concurrently. Challenging the said conviction and sentences, the second accused is before this Court with this appeal.

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

(a) This is a case of dacoity with murder. P.W.1, a former Manager of Lakshmi Vilas Bank, was residing at Sitheri Village, in Villupuram District. He had two sons. The first son is one Mr.K.P.R.Raman. The deceased in this case Mrs.Umamaheswari was the wife of Mr.K.P.R.Raman. Mr.Raman was running a Pawn Broker Shop under the name and style of 'R.S.M.Pawn Brokers'. The said shop was functioning at the house of Mr.Raman, at Gangapuram Village Main Road. Sitheri and Gangapuram are neighbouring villages. The deceased was residing in the house along with Mr.Raman. The Pawn Broker Shop was running in a portion of the said house.

(b) On 8.7.2004, at about 9.45 a.m,. P.W.1 was proceeding to Gangapuram Village to oversee the harvest grown in his field. While going, he visited the house of the deceased. At that time, his son Mr.Raman was not available, as he had gone

to Villupuram. The deceased alone was at her house. After seeing her, P.W.1, proceeded to his field.

(c) At 1.30 p.m., after harvest was over, P.W.1 was returning to his house. En-route, he went to the house of the deceased. When he was nearing the main gate of the house, a man, aged about 20 years, was coming out of the house (later P.W.1 identified him as 5th accused). P.W.1 questioned him. He told him that he had come to the shop to pledge jewels. Then he fled away from the said place. After entering into the house, P.W.1 called his daughter-in-law, namely, the deceased. But, there was no response. When he went to the kitchen, he found that two persons were holding the hands of the deceased, one person was constricting her neck and another person was dashing the head of the deceased against the wall. The deceased cried, out of pain. P.W.1 raised alarm and shouted at them to leave her. The assailants ran away from the house. On hearing the alarm raised, the villagers gathered. They gave a chase and rounded up all the four assailants, caught them hold and brought them back to the place of occurrence. They are the accused 1 to 4. The deceased succumbed to the injury on the spot. A1 was the one, who constricted the neck of the deceased. A3 and A4 were the persons, who held the hands of the deceased and A2 was the one who dashed the head of the deceased against the wall.

(d) When P.W.1 verified, he found the locker box kept open. The bureau in the bed room was also kept open. The sarees and other materials were found in disseminating. Some jewels and the cash from the locker box were found lying on the floor. Most of the jewels had been taken away by the accused. When the villagers checked, A1 was found possessing cash in a plastic bag. A2 had held silver anklet, silver Kunkum Chimiz and two wrist watches in his pant pocket. The accused 1 to 4 had knives also. The villagers recovered the same. Then, the villagers took all the four accused to the police station and produced them before the police. P.W.1 accompanied them and made a complaint under Ex.P1.

(e) P.W.13, the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.229 of 2004, under Sections 396 and 397 of the Indian Penal Code against the accused 1 to 5. The fifth accused was the one who ran away from the scene of occurrence, when P.W.1 reached the house of the deceased. Ex.P.25 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 6.30 p.m. on 8.7.2004. He recovered cash of Rs.10,690/- (M.O.1), silver anklets (M.O.2), Silver Kunkum chimiz (M.O.3), wrist watch (M.O.4), Omex wrist watch (M.O.5), blood stained shirt (M.O.8), Pen knife (M.O.7) and another pen knife (M.O.6). He recovered all the material objects, on being produced, in the

presence of P.W.3 and one Mr.Harikumar. Then, he proceeded to the place of occurrence at 4.00 p.m. and prepared an observation mahazar and a rough sketch, in the presence of P.W.5 and another witness. Through P.W.8, he took photographs of the place of occurrence. He recovered blood stained earth and sample earth from the place of occurrence, under a mahazar. He also recovered the broken glass pieces from the place of occurrence. P.W.1 was sent with a police man to the hospital. He has sustained injury in the same occurrence, at the hands of the accused. P.W.9 had examined him and she found the following injuries:

"(1) Punctured out wound of 0.5 cm x 0.25 cm x 0.25 cm on the (R) side of the forehead.
(2) Injury of 1 cm x 1 cm on the (R) side of the head, (3) abrasion of 1 cm x 0.75 cm on the (R) hand are red in colour."

Ex.P9 is the accident register. Then, P.W.13 conducted inquest on the body of the deceased and forwarded the body for post-mortem. P.W.10 conducted autopsy on the body of the deceased on 9.7.2004, at 9.30 a.m. He found the following injuries on the body of the deceased:

"External injuries: (1) contusion on the right side neck 8 x 5 cm. On dissection there is contusion of the subcutaneous and muscles present. Hyoid bone is taken out preserved. In tact. (2) Lacerated wound hon the right slide frontal area 5 x 2 cm x bone deep. (3) Lacerated wound with right parietal area 8 cm x 2 cm x bone deep. Underlying parietal bone is fractured under (placed) (crack). (4) Lacerated wound on the occipital area extending more on the left side 10 cm x 8 cm. (6) Abration over the left knee 4 x 3 cm. Above injuries were ante mortem in nature. (7) contusion over left side cheek 5 x 3 cm."

Internal appearance: Head - Injuries in (2) (3) (4) and (5) injuries. Meninges - intact. Brain - congested. About 50 cc of blood clot. Subdurally over right parietal area."

Ex.P.11 is the post-mortem certificate. The Doctor gave opinion that the death was due to the head injury, 24 to 36 hours before the autopsy.

(f) P.W.13 arrested all the four accused and then forwarded them to the Court for judicial remand. The

investigation was thereafter taken over by P.W.14. On 19.7.2004, at 8.00 a.m. he arrested the 6th accused, in the presence of P.W.6 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed the place where he had hidden a pair of gold ear studs. In pursuance of the same, he took the police and the witnesses to his house and produced M.O.17 and M.O.9. P.W.14 recovered the same under a mahazar. Then, he forwarded the 6th accused for judicial remand. The 5th accused had surrendered before the Judicial Magistrate at Gingee, on 20.7.2004. He took police custody of the 5th accused, on the orders of the Magistrate. While in custody, he gave a voluntary confession, in which, he disclosed the place where he had hidden a pair of gold ear studs. In pursuance of the same, he took the police and the witnesses to his house and produced M.O.10 and M.O.18. P.W.14 recovered the same under a mahazar. Then he forwarded the accused to the Court again for judicial remand. Investigation was thereafter taken over by P.W.15, who, on completing the investigation, laid charge-sheet against all the accused.

3. Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this judgement. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 28 documents and 22 material objects were marked. Out of the said witnesses, P.W.1 is the injured eyewitness and he is the father-in-law of the deceased. He has stated that when he went to the house of the deceased, at the time of occurrence, he found the fifth accused fleeing away from the scene of occurrence. When he entered into the house, he found the accused 1 to 4 in the kitchen. The first accused was found strangulating the deceased. Accused 3 and 4 were found holding the deceased and the second accused dashing the head of the deceased against a wall. When he shouted and tried to rescue, the accused attacked him also and he sustained injury. Then, on hearing the alarm raised by him, P.Ws.3, 4 and few more neighbours gave a chase and caught hold the accused 1 to 4 and brought them back. From them, the stolen goods were recovered. P.W.2 is the husband of the deceased, who has stated that he was not at the house, at the time of occurrence. He came later. P.Ws.3 and 4 are the crucial witnesses for the prosecution. They have stated that they gave a chase and caught hold the accused 1 to 4 and then, the jewels and wrist watches were recovered from them. P.W.5 is the Village Administrative Officer, who has stated that in his presence, the observation mahazar and the rough sketch were prepared, at the place of occurrence and also the blood stained earth and sample earth were recovered. He has further stated that broken bangles were also recovered. P.W.6 has spoken about the confession of A6 and the recovery of M.Os.9 and 17 from out of his disclosure statement. P.W.7 has spoken

about the arrest of the 5th accused and the recovery of gold jewels (M.Os.9 and 10.), on the disclosure statement made by him. P.W.8 has spoken about the Photographs taken at the place of occurrence. P.W.9 has spoken about the treatment given to P.W.1. P.W.10 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.11 is the head clerk of the Court. He has stated that he forwarded the material objects for chemical examination. P.W.12 is the constable, who has stated that he took the dead body from the place of occurrence to the hospital and handed over the same for post-mortem. P.W.13 has spoken about the registration of the case and the initial investigation done by him. P.Ws.14 and 15 have spoken about the First Information Report and the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side. Their defence was a total denial. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgement.

5. It is brought to the notice that the accused 1, 3 and 4 filed criminal appeals before this Court in CrI.A.Nos.73, 362 and 788 of 2007 and those appeals were dismissed by a Division Bench of this Court, thereby confirmed the conviction and sentence imposed on them. The second accused alone has come up with the present appeal.

6. We have heard the learned counsel for the appellant and also the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. In this case, the prosecution mainly relies on the eyewitness account of P.W.1 and the evidences of P.Ws.3 and 4, who have stated that they gave a chase and caught hold the accused 1 to 4, red-handed. The learned counsel for the appellant would submit that the evidence of P.W.1 cannot be believed, as he is an interested witness. But, we do not find any force in the said argument at all. P.W.1 is an injured eyewitness. The injury sustained by him has been spoken by P.W.9. His presence at the place of occurrence cannot be doubted. He has stated that four persons were inside the house and the accused 3 and 4 were holding the deceased and the first accused was strangulating and the second accused dashed the head of the deceased in the wall. When he intercepted, he was also attacked. Though at that time, P.W.1 was not aware of the names of these accused, he had identified these four accused to P.Ws.3 and 4. P.W.s 3 and 4, on hearing the alarm raised by P.W.1, found all the four accused running away from the scene of occurrence. They gave a chase and finally they caught them hold at a small distance from the

place of occurrence. When they brought them back, they found that the accused were in possession of the stolen properties, from the house of the deceased. There is no reason to reject the evidences of P.Ws.3 and 4, who are the villages, who have stated that they caught these four accused red-handed. A Division Bench of this Court, in the appeals preferred by the other accused, in CrI.A.Nos.73, 362 and 788 of 2007, has mainly relied on the evidences of these witnesses and confirmed the conviction and sentences imposed on A1, A3 and A4. Applying the same yardstick, we find that the prosecution has proved that the appellant was one of the dacoits. Though the trial Court has acquitted the fifth and sixth accused, that acquittal was on the ground of dispute regarding their identity. But there is enormous evidence to prove that the dacoits were five in number. The death of the deceased was caused by the dacoits. Therefore, the appellant is liable to be punished for offence under Section 396 of the Indian Penal Code.

8. The learned counsel for the appellant would submit that having convicted the appellant for offence under Section 396 of the Indian Penal Code, which is a major offence, the conviction and sentence imposed on the appellant again, for the offence under Section 395 of the Indian Penal Code, would amount to double jeopardy.

9. We find force in the said argument. Offence under Section 396 of the Indian Penal Code is a major offence, which includes dacoity. Therefore, when the appellant has been convicted for the major offence under Section 396 of the Indian Penal Code, there cannot be yet another punishment for the minor offence under Section 395 of the Indian Penal Code. Therefore, as rightly contended by the learned counsel for the appellant, the conviction and sentence imposed on the appellant, for offence under Section 395 of the Indian Penal Code, is liable to be set aside. But, he is liable to be punished for offence under Section 396 of the Indian Penal Code. Unfortunately, the trial Court has not framed a separate charge for offence under section 302 of the Indian Penal Code. Therefore, no separate punishment could be imposed for offence under Section 302 of the Indian Penal Code, at this stage. In these circumstances, we bound to confirm the conviction and sentence imposed on the appellant for offence under Section 396 of the Indian Penal Code alone.

10. Now turning to the quantum of punishment, the trial Court has imposed only a minimum punishment, which is just and reasonable and the same does not warrant any interference.

11. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant for the offence under Section 395 of the Indian Penal Code is set

aside. However, the conviction and sentence, imposed on the appellant, for the offence under Sections 452 and 396 of the Indian Penal Code are confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Judicial Magistrate,
Gingee.
- 2.Do- Through The Chief Judicial Magistrate,
Thiruvannamalai District.
- 3.The Additional District and Sessions Judge,
Fast Track Court, No.II, Tindivanam.
- 4.Do- Through The Principal Sessions Judge,
Tindivanam.
- 5.The Inspector of Police,
Valathi Police Station,
Cuddalore District.
- 6.The Superintendent of Central Prison,
Vellore.
- 7.The Superintendent of Police,
Villupuram.
- 8.The District Collector,
Villupuram.
- 9.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.V.Parthiban, Advocate, S.R.No.22621

Cr1.A.No.255 of 2013

SCD(CO)
CA(08/06/2016)