

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.968 of 2006

Vinoth Kumar

... Appellant

vs.

The State, rep. by
The Inspector of Police,
Thudiyalur Police Station.
Coimbatore District.
(Crime No.857 of 2003)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 02.03.2006 passed by the learned
Additional District and Sessions Judge, (Fast Track Court No.II),
Coimbatore, in S.C.No.113 of 2005.

For Appellant : Mr.H.Rajasekar

For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

JUDGMENT

The first accused, in Sessions Case No.113 of 2005, on
the file of the learned Additional District and Sessions Judge,(Fast
Track Court No.II), Coimbatore, is the appellant herein. Totally,
there are two accused in this case. They stood charged for offence

under Section 394 r/w 397 of IPC. The trial Court, after trial, by judgement dated 02.03.2006, convicted the appellant/accused for the offence under Section 392 IPC., and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs.100/- in default, to undergo rigorous imprisonment for one month. Challenging the above said conviction and sentence, the appellant/first accused is before this Court with this appeal.

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

(i) P.Ws.1 and 2 were residing in NGO Colony at Coimbatore. On 12.11.2003 at about 1.45 p.m., three persons broke open the door of the P.W.1's house and entered inside, and tied P.W.2, the mother of P.W.1 and also P.W.3, the servant maid in the house. Then, they stolen the VCD player, wrist watch and cash of Rs.750/- and ran away. P.W.3 managing to untied the knot and informed the same to the neighbours, in turn, P.W.1 was informed. Then, P.W.1 came to the house and searched for the accused, thereafter he has given complaint to the respondent police.

(ii) P.W.15, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case in Crime No.857 of 2003, for the offence under Section 392 IPC, prepared first information report[Ex.P23] and sent the same to the Judicial Magistrate Court and copies of the same to the higher

officials.

(iii) P.W.16, the Inspector of Police, working in the respondent police, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared an observation mahazar[Ex.P8], rough sketch [Ex.P24] and recovered a lungi and a towel[M.O.15 series] used to tie P.Ws.2 and 3 at the time of occurrence. He examined the witnesses and recorded their statements and handed over the investigation to P.W.17, his successor.

(iv) P.W.17, the Inspector of Police, working in the respondent police station, continued the investigation. On 05.12.2003 at about 4.00 p.m., he arrested the first accused near women polytechnic, Coimbatore and on such arrest, he voluntarily given confession and based on the disclosure statement, he recovered the stolen articles[M.Os.2 to 15] under seizure mahazar Ex.P14. Since the second accused was already in Judicial custody in respect of another case, he took him in police custody, and in police custody, the second accused has voluntarily given a confession, based on the disclosure statement, P.W.17, recovered some stolen articles. Then, he handed over the case to P.W.18, his successor.

(v) P.W.18, the Inspector of Police, continued the investigation, examined the finger print expert and other witnesses

and recorded their statements and he made arrangement for conducting test identification parade of the accused and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 18 witnesses, exhibited 24 documents and 15 material objects were marked.

4. Out of the witnesses examined, P.W.1 is the son of P.W.2. According to him, they are residing at NGO Colony, Coimbatore and his brother was running a studio. On the date of occurrence at about 1.00 p.m., he had a lunch at the house and came back to studio. Thereafter, he was informed that somebody had stolen the articles from his house. Immediately, he went his house and searched for the accused, thereafter he has given a complaint before the respondent police. P.W.2 is the mother of P.W.1. According to her, on the date of occurrence at about 1.45 p.m., three persons entered into her and tied her and P.W.3 servant maid with lungi. Thereafter, they stolen VCD player, wrist watch and cash of Rs.750/- and she identified the accused in the test identification parade. P.W.3 is the servant maid in P.Ws.1,2's

house. She has also reiterated the evidence of P.W.3. P.W.4 is Finger Print expert. He says that chance a finger print is available in the said house and he compared the same with the accused and it tally with the finger print. P.W.5 is working in Sniper Dog division, and he engaged the sniper dog in the scene of occurrence. P.W.6 is the brother of P.W.1. According to him, at the time of occurrence he was at Kerala, after the occurrence he came to know about the same. P.W.7 is the witness to the observation mahazar. P.W.8 is the witness to the observation mahazar and recovery of M.Os.11,12 & 15. P.W.9, the learned Judicial Magistrate No.6, Coimbatore. He conducted test identification parade for the second accused. In the said identification parade, P.Ws.1 and 2 identify the second accused. P.Ws.10 and 11 are witnesses to the arrest and recovery of stolen articles. P.W.12, the Judicial Magistrate No.4, Coimbatore. He conducted test identification parade for the first accused. In the said identification parade, P.Ws.1 and 2 identify the first accused. P.W.13 is the witness to the arrest of A-1 and recovery of stolen articles. P.W.14 is neighbour of P.W.2. He informed the occurrence to P.W.1. P.W.15 is the Sub Inspector of Police working in the respondent police station, he registered the case and prepared first information report and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.16 is the Inspector of Police working in the

respondent police station. According to him, on receipt of the first information report, he commenced the investigation, prepared observation mahazar and rough sketch, examined the witnesses and recorded their statements and handed over the investigation to P.W.17, his successor. P.W.17 is the Inspector of Police working in the respondent police station. He continued the investigation, arrested the accused and recovered the stolen articles, examined the witnesses and recorded their statements and thereafter he handed over the investigation to P.W.18 his successor. P.W.18 is the Inspector of Police, working in the respondent police station. He continued the investigation, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. The accused did not examine any witness and no document was marked on their side.

6. Having considered all the above, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the first accused is before this Court.

7. I have heard Mr.H.Rajasekar, learned counsel appearing for the appellant and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the State and I have also perused the records carefully.

8. P.Ws.2 and 3 are the eye witness to the occurrence. According to P.W.2, on the date of occurrence at about 1.45 p.m., three persons entered into her house and tied her with lungi and also P.W.3, the servant made. Thereafter, they stolen VCD player, wrist watch and cash Rs.750/-. Subsequently, based on the complaint given by P.W.1, the crime was registered. Then, during the investigation, both the accused were arrested and based on their confession statements, the stolen articles were seized. Thereafter, the test identification parade was conducted, in which, both P.Ws.2 and 3 identified the accused. Subsequently, the stolen articles also identified by PWs.1 and 2. Since the stolen articles were recovered from the accused immediately after the occurrence, but there is no explanation on the side of the accused for the possession of the stolen articles under Section 114(a) of the Evidence Act, it could be presumed that it is this accused involved in the crime and stolen the property. In the above circumstances, there is no reason to disbelieve the evidence of P.Ws.2 and 3.

Hence, I am of the considered view that the prosecution has established that it is only this accused has entered into the house of P.W.2 and committed the crime, and I find no infirmity or illegality in the finding of the trial Court.

9. So far as the sentence is concerned, the trial Court convicted the appellant and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.100/- in default to undergo one month simple imprisonment. The learned counsel appearing for the appellant submitted that the appellant is a student and young man and he has chance to reform and he has no bad antecedence and he has already jail for more than 31 months. Taking into consideration the mitigating as well as aggravating circumstance, the sentence is modified to the period of sentence already undergone.

10. In the result, the Criminal Appeal is partly allowed and the conviction imposed on the accused/appellant in S.C.No.113 of 2005 dated 02.03.2006, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.II), Coimbatore, is confirmed and the sentence is modified to the period of sentence already undergone and to pay a fine of Rs.1000/-, in default, to undergo one month simple imprisonment.

24.01.2017

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To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.II,
Coimbatore District.
- 2.The Inspector of Police,
Thudiyalur Police Station.
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.

V.BHARATHIDASAN.J.,

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