

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL Nos.1401,1586 of 2008&1262 OF 2012

COMMON JUDGMENT:

These three Criminal Appeals are arising out of the same judgment and therefore, they are heard together and being disposed of by this common judgment.

Criminal Appeal No.1401 of 2008 is preferred by A.1, A.4 & A.5; Criminal Appeal No.1586 of 2008 is preferred by A.2; & Criminal Appeal No.1262 of 2012 is preferred by A.3 challenging the judgment of the Additional Assistant Sessions Judge, Chittoor dated 01.09.2008 in S.C.No.165 of 2008. By the said judgment, all the accused were convicted for the offence under Section 395 IPC and were sentenced to undergo R.I. for 10 years and to pay a fine of Rs.2,000/- each, in default, to undergo S.I. for 3 months.

The case of the prosecution, in brief, is that on the intervening night of 29/30.1.2007, at about 12.00 midnight, all the accused armed with knives and sticks, entered into the house of P.W.1, threatened him and his wife that they would kill them and robbed gold and silver jewellery, saree, cell phone, all worth Rs.40,000/- and decamped with booty. On the complaint lodged by P.W.1 on 30.1.2007 at 2.30 p.m., P.W.10-Sub-Inspector of police, registered a case in Crime No.12 of 2007 and after completion of investigation, charge sheet was laid against all the accused for the offence under Section 395 IPC.

In order to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 12 and marked Exs.P.1 to P.18

and exhibited M.Os.1 to 7. On behalf of defence, no oral or documentary evidence was adduced.

After analyzing the evidence brought on record, the trial Court mainly relying on the evidence of P.W.1, convicted and sentenced the appellants-accused as aforementioned. Hence, the appeal by the accused.

Heard the learned counsel for the appellants and learned Public Prosecutor. Perused the material available on record.

The trial Court convicted the appellants mainly basing on the evidence of P.W.1. He deposed that during midnight on the date of occurrence, about 4 persons entered into his house armed with knives and sticks and threatened them and snatched away the gold articles, cash and other articles. Thus even as per the evidence of prosecution, only four persons entered into the house of P.W.1. Though P.W.1 informed that the accused are identifiable, but, the descriptive particulars of accused are not mentioned in the earliest report even though P.W.1 and A.1 belongs to the same village and A.1 is known to him. If the version of P.W.1 is true, he ought to have informed in the complaint regarding the specific particulars of the accused. Considering the evidence brought on record, this Court is of the view that the offence under Section 395 IPC is not made out, but considering the evidence of prosecution witnesses and the recovery of stolen articles basing on the confessional statements of accused, this Court is of the view that the prosecution is able to establish the guilt of the accused for the offence under Section 380 IPC and they are liable to be convicted for the said offence.

In the result, all the Criminal Appeals are partly allowed. The conviction and sentence imposed on the accused-appellants for the offence under Section 395 IPC is hereby set aside and modified to the one under Section 380 IPC and the sentence of imprisonment is modified to the period already undergone by the accused-appellants. The fine amount imposed by the trial Court for the offence under Section 395 IPC shall be treated as has been imposed by this Court for the offence under Section 380 IPC.

Pending Miscellaneous petitions, if any, shall stand closed.

28.09.2016
Tsr



JUSTICE RAJA ELANGO