

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.10.2017

PRONOUNCED ON : 11.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Crl.A.No.61 of 2017

1.Elango
2.Ranganathan
3.Baali

... Appellants

Vs.

State by
Inspector of Police
P9 Police Station
Coimbatore District

... Respondent

Criminal Appeal filed under Section 374 of Cr.P.C. against the sentence and order passed in S.C.No.24 of 2014 dated 06.01.2017 by the learned I Additional Sessions Judge, Coimbatore and seeks to set aside the same.

For Appellants : Mr.G.D.Stalin

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

J U D G M E N T

This appeal has been filed against the sentence and order passed in S.C.No.24 of 2014 dated 06.01.2017 by the learned I Additional Sessions Judge, Coimbatore.

2. The gist of the prosecution case is as under:

[a] Ramakrishnan [P.W.1] aged about 75 years, retired Superintendent of Government Engineering College was residing with his wife Kamala [P.W.2] aged 65 years at 56, R/2 Lakshmi House, 3rd street, Sivanandapuram, Coimbatore. On 26.09.2012, around 12.30 noon, when the old couple were at home, three persons entered into their house and one of them throttled Kamala's [P.W.2] neck with a knife in hand and the other held her tight brandishing a knife and the third one was holding chilly powder. They attempted to cut the thali chain that was worn by her and when she started making hue and cry, her husband Ramakrishnan [P.W.1] came to her rescue. The trio were unsuccessful in relieving the gold chain from Kamala [P.W.2], but after a brief scuffle, they pushed the couple down and fled away in a motorcycle bearing registration no.TN-38-BM-6283.

[b] After getting relieved from the shock, Ramakrishnan [P.W.1] lodged a complaint [Ex.P.1], based on which, the Sub-Inspector of Police, B-9 Saravanampatty (Crime) Police Station registered a case in Cr.No.752 of 2012 under Section 393 r/w 398 IPC against three unnamed accused. Even in the complaint, Ramakrishnan [P.W.1] stated that he grappled with the trio and therefore, he can identify them.

[c] Investigation of the case was taken over by Elango [P.W.6], who went to the place of occurrence and prepared the Observation Mahazar [Ex.P.2] and recorded the statement of various witnesses. on 27.09.2012, he arrested all the three accused and recovered the motorcycle bearing registration no.TN-38-BM-6283 under the cover of Mahazar [Ex.P.5] in the presence of witnesses Pandian

[not examined] and Suresh [P.W.5]. On the disclosure statement of the accused, the Investigating Officer recovered a knife [M.O.2] and chilly powder packet [M.O.3] under the cover of Mahazar [Ex.P.6] in the presence of Pandian [not examined] and Suresh [P.W.5].

[d] The Investigating Officer made arrangements for conduct of Test Identification Parade and the same was conducted by Mr.A.Ramesh Babu, Judicial Magistrate No.III, Coimbatore on 19.10.2012 at the Central Prison, Coimbatore, where the three accused were in remand. In the Identification Parade, Ramakrishnan [P.W.1] and his wife Kamala [P.W.2] identified all the three accused. Investigation was completed and charge sheet was filed before the Judicial Magistrate No.II, Coimbatore for the offence under Section 393 r/w 398 IPC against the three accused.

3. On the appearance of the accused, they were furnished with the copies of the relied upon documents u/s 207 Cr.P.C. and the case was committed to the Court of Sessions in S.C.No.24 of 2014 and was made over to the Assistant Sessions Court, Coimbatore for trial. Charges were framed against them under Section 393 r/w 398 IPC and they pleaded not guilty to the charges.

4. The prosecution examined 6 witnesses, marked 11 exhibits and 4 material objects. When the accused were questioned under Section 313 Cr.P.C., they denied the same. No witness was examined on behalf of the accused. After considering the evidence on record, the trial Court held the accused guilty of

charges and sentenced each of them to undergo seven years Rigorous Imprisonment, aggrieved by which, the accused are before this Court.

5. Heard the learned counsel for the appellants/accused and the learned Additional Public Prosecutor appearing for the State.

6. Learned counsel for the accused submitted that Ramakrishnan [P.W.1] has stated in his cross-examination that he knows the accused, but strangely, he had not given the name of the accused in the complaint, which form the basis of the FIR. He also submitted that the FIR reached the Court only on 27.09.2012 and the delay has not been explained by the prosecution. It is his further submission that Kamala [P.W.2], in her cross examination, has stated that she saw the accused in the Police Station and therefore, the entire Test Identification Parade has become a farce. He further contended that Suresh [P.W.5], the mahazar witness did not support the prosecution in his cross-examination.

7. Per contra, learned Additional Public Prosecutor refuted the allegations.

8. This Court perused the evidence on record in the light of the submissions made by the learned counsel for the accused.

9. It is the case of the prosecution that three persons had entered into the house of the elderly couple and had tried to rob the lady of her chain. In the complaint [Ex.P.1] and in the evidence given by Ramakrishnan [P.W.1], he has

clearly stated as to how the accused suddenly barged into the house and at knife point, tried to relieve the gold chain from his wife and at that time, he went to her rescue and grappled with them.

[a] The incident had taken place at 12.30 noon and not in the night hours. Therefore, the possibility of Ramakrishnan [P.W.1] observing the features of the three persons and recording the same in his memory cannot be ruled out. In fact, in the complaint, he has clearly stated that he can identify the three persons well. The incident had taken place on 26.09.2012 and the Test Identification Parade was conducted on 19.10.2012, which is less than a month. It is true that in the evidence, he has stated that he knew A1 before, but, that does not mean that he knows his name. Even in the cross-examination of Ramakrishnan [P.W.1], it has been stated that A1 was living in the same locality. Thus, even according to the defence, A1 belongs to the same locality and therefore, there is every possibility of Ramakrishnan [P.W.1] knowing A1, but, it does not mean that he would have known his name. One may know several persons living in and around his house, but he may not know all their names. Therefore, non furnishing of the name of A1 by Ramakrishnan [P.W.1] to the police at the time of lodging the complaint cannot be said to be fatal.

[b] That apart, the defence had not even suggested in the cross-examination, any motive of Ramakrishnan [P.W.1] and his wife Kamala [P.W.2] that they are falsely implicating the accused on account of previous motive. Thus, the old couple have no personal axe to grind against the three accused. It is true

that Kamala [P.W.2] has stated in her cross-examination that she saw the accused sitting in the Police Station. However, this can only make her evidence qua identification of the accused unacceptable, but it cannot have the effect of impeaching the creditworthiness of her testimony, that three persons came into her house on 26.09.2012 around 12.30 noon and attacked her and tried to relieve the gold chain from her by brandishing knives.

10. From the records, it is seen that Ramakrishnan [P.W.1] and Kamala [P.W.2] were examined-in-chief on 01.12.2015 and the defence counsel have reported no cross and therefore, they were recalled under Section 311 Cr.P.C. and cross-examined on 10.08.2015, which is nearly 10 months after their examination-in-chief.

11. As regards the evidence of Suresh [P.W.5], he was examined-in-chief on 12.11.2015, wherein he supported the case of the prosecution with regard to recovery of motorcycle, knife, etc under the cover of Mahazar [Ex.Ps.5 and 6]. However, he was not cross-examined on that day, but was recalled on 03.10.2006, i.e., 1-1/2 years later and was cross-examined. During the cross-examination, he has stated that he had signed the recovery mahazar in the Police Station. In view of the amendment to Section 154 of the Evidence Act, it is not open to this Court to completely discard the evidence of the mahazar witness, especially in the light of the fact that he was recalled and cross-examined 1-1/2 years later. Even if the mahazar witness turns hostile, the evidence of the Investigating Officer can be relied upon for proof of recovery. In this case, the defence have not been able to

make any dent in the evidence of the Investigating Officer in this regard.

In fine, this Court does not find any merit in the appeal warranting interference. The judgment dated 06.01.2017 passed in S.C.No.24 of 2014 by the learned I Additional Sessions Judge, Coimbatore is confirmed and the appeal stands dismissed.

11.12.2017

gms

To

1. I Additional Sessions Judge,
Coimbatore.

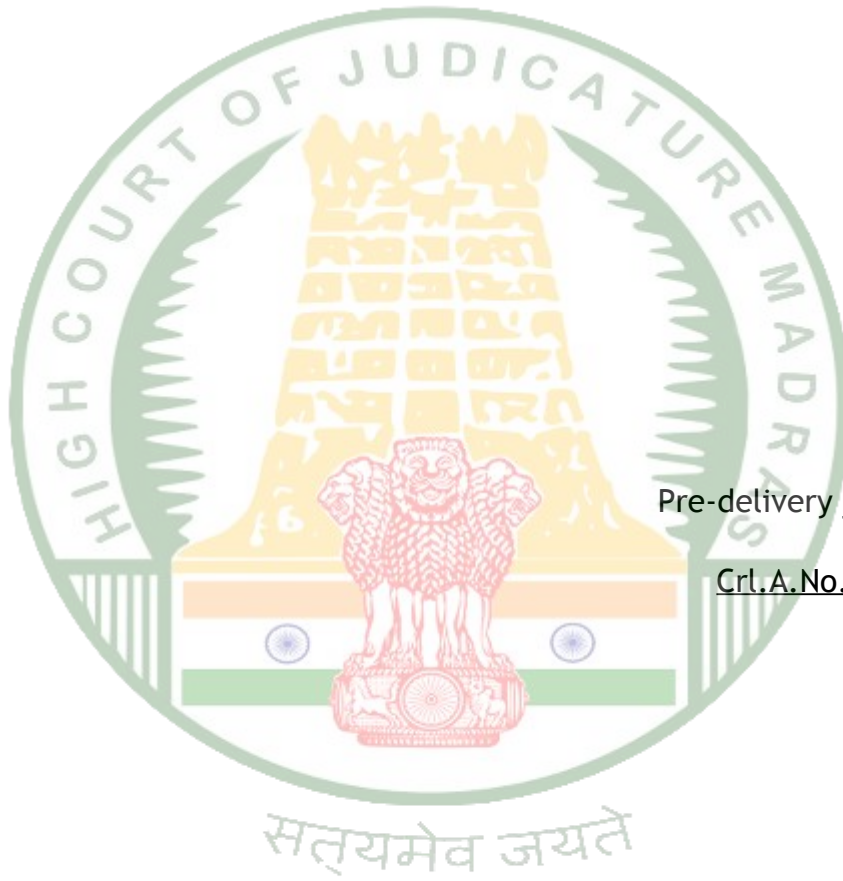
2. The Public Prosecutor,
High Court, Madras.



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P.N.PRAKASH, J.

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Pre-delivery judgment in

CrL.A.No.61 of 2017

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