

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.529 of 2015

1.Samy @ Saminathan

2.Venkatesan

3.Sudhakar

... Appellants/Accused 1 to 3

Vs.

State by

Inspector of Police,

Korattur Police Station,

(Crime No.751/2007).

... Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment of the 2nd Additional District and Sessions Judge of Thiruvallur at Poonamallee at Thiruvallur District made in S.C.No.105 of 2011 dated 08.07.2015 convicting all the appellants/ accused 1 to 3 under Section 120(B) IPC sentencing them to undergo six months simple imprisonment and under Section 394 r/w 397 IPC sentencing them to undergo seven years imprisonment for each. The sentence imposed upon the appellants/accused 1 to 3 shall run concurrently. No fine amount.

For Appellants : Mr.E.Kannadasan (for A1)

(Legal Aid counsel)

Mr.R.Rajasekaran (for A2)

Mr.D.Ashok Kumar (for A3)

For Respondent : Mr.J.Karuppiah

Additional Public Prosecutor

JUDGMENT

This Criminal appeal has been filed against the judgment dated 08.07.2015 made in S.C.No.105 of 2011 passed by the Learned II Additional District Judge, Thiruvallur, convicting the appellants herein under Section 120-B IPC and sentenced them to undergo 6 months simple imprisonment and under section 394 r/w 397 IPC sentenced them to undergo 7 years simple imprisonment and the sentences are ordered by to run currently.

2.The case of the prosecution is that the appellants/accused were called upon by the PW-1 Suguna just prior to the date of occurrence i.e. on 20.9.2007 for doing plumbing work in her house and they completed the same. On the very next day i.e. on 21.9.2007 the accused 1 and 2 went to PW-1's house at about

01.30 p.m and they were informed by PW-1 that the water was not coming in the pipe which was repaired on 20.09.2007 and therefore accused 1 and 2 asked PW-1 to give the tools. While she turned to pick the tools from the shelf, the accused caught hold her and closed her mouth and they sprayed poisonous powder on her face and thereafter they robbed 16 sovereigns of gold jewels from her and ear rings and thereafter they locked her inside the bathroom and ran away. After that PW-1 made a hue and cry. On hearing the same the neighbours of her house came and rescued her. The PW-3 Sharma took her to the hospital where the police came and received complaint from PW-1 and thereafter the FIR was registered against the accused in Crime No.751 of 2007 on 21.09.2007 for the offences under Sections 392, 397 IPC.

3. Thereafter, the case was taken up for investigation by Mr. Subbarao, the then Inspector of Police who conducted the investigation in the above crime number. In this regard, PW-7 Manivannan has deposed that the said Inspector of Police Mr. Subbarao after registering FIR, went to the place of occurrence and prepared mahazar and sketch and he arrested the accused and recovered the material object M.O.4 from PW-5. On completion of the investigation the then Inspector of Police Mr. Subbarao laid charge sheet against the accused for the offences under Sections 120-B, 394, 397 and 109 of IPC, before the Learned Metropolitan Magistrate, Ambatore and the same was taken on file in P.R.C.No.10 of 2009. As the offence under Sections 394 and 397 IPC is exclusively triable by the Court of Sessions, the Learned Magistrate committed the same to the Principal District and Sessions Judge, Thiruvallore. The Learned Principal District Judge has made over the same to the 2nd Additional District and Sessions Judge, Ponnammallee for disposal.

4. Based on the above materials the trial Court framed charges against the accused and the accused denied the same. In order to prove the case, on the side of the prosecution 8 witnesses were examined and 12 documents were marked and 6 material objects were marked. No oral evidence adduced or documents produced on the defense side.

5. Out of the said witnesses, PW-1 Suguna victim speaks about the occurrence taken place on 21.09.2007 at her house and the robbery committed by accused 1 & 2. In the said occurrence PW-1 suffered with left ear lobe multiple contusion face and the injuries are grievous in nature. She was taken to Sridevi Private Hospital by the neighbors where the police came and obtained her statement and she further deposed that she identified the accused 1 and 2 at the police station where she was called upon by the police to identify the accused. The accused attempted to commit murder by strangulating her neck.

6.PW-2 Paneer Selvam who is the tenant of Pw-1's house speaks about observation mahazar Ex-P2 and seizure mahazar Ex-P3 and recovery of the empty vessel of pesticide M.O.6.

7.PW-3 Sharma who is also one of the tenants of PW-1 turned hostile regarding the identification of the accused. He deposed that he did not know the accused. On the date of occurrence on hearing the sound from the ground floor of his owner's house, he rushed to the ground floor, where he saw that PW-1 was laid down in the bathroom. Thereafter he along with others taken the PW-1 into the auto and admitted her at Sridevi Private Hospital at Koyambedu.

8.PW-4 Maharajan speaks about the seizure of gold ring and he was the witness of M.O-4 recovered from PW-5.

9.PW-5 Ram Mohan spoken that he is a owner of pawn broker shop and from his shop M.O-4 gold ring was recovered by the police in the presence of PW-4 Maharajan.

10.PW-6 Doctor Thangaraj has deposed that PW-1 Suguna was admitted at Sridevi Hospital where he was on duty as Medical Officer and he treated PW-1 Suguna on 21.09.2007 issued Accident Register Ex-P5, wound certificate Ex-P6.

11.PW-7 Mr.Manivannan Inspector of Police at Korattur Police Station deposed that originally the investigation in this case was taken over by the then Inspector of Police who registered the complaint of PW-1 on 21.09.2007. PW-7 deposed that, he gives the evidence on behalf of Investigation Officer Subburaj with permission of the Court regarding the registration of F.I.R., the arrest of accused, recovery of material object and about the filing of charge sheet against the accused.

12.From the analysis of the evidences of PW-1 to 8, documents Ex P1-P12 and M.O.1 to 6, the Learned trial Judge by Judgment dated 08.07.2015 convicted the accused in the manner detailed above. Challenging the conviction and sentence the appellants/accused are before this Court in this appeal.

13.I heard Mr.E.Kannadasan, learned counsel for the 1st appellant, Mr.R.Rajasekaran, learned counsel for the 2nd appellant, Mr.D.Ashok Kumar, learned counsel for the 3rd appellant and Mr.J.Karuppiah, learned Additional Public Prosecutor for the respondent and perused the entire records.

14. The learned counsel for the appellants would contend that in this case, the only eye witness is PW-1 Suguna who is the victim in this case has spoken about the involvement of the accused in the occurrence and also the identification of the accused at Police Station. The trial Court has convicted the accused on the sole testimony of PW-1. Further the identification of the accused was not conducted in the manner known to law and as per section 9 of the Indian Evidence Act, 1872 which reads as follows:

"9. Facts necessary to explain or introduce relevant facts.-

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."

15. The learned Additional Public Prosecutor would submit that the prosecution has proved case with sufficient oral and documentary evidence and the learned trial Court has recorded conviction after proper analysis. Further contention of the learned Additional Public Prosecutor that the Court can very well convict the accused on the sole testimony of the eye witness and therefore the conviction and the sentence imposed on the accused by the trial Court on the sole testimony of PW-1 is proper. So, no intervention is required on the judgment of the learned Trial Court. Therefore considering the totality of the case the appeal is to be dismissed.

16. This Court has considered the above said argument of the learned counsel for the appellants and this Court is of the firm view that the identification of the accused should have been conducted in the presence of the concerned Judicial Magistrate by conducting identification parade. In this case, no such identification parade was conducted in the presence of the Judicial Magistrate and the identification conducted at police station has no evidentiary value in the eye of law which is also against section 9 of the Indian Evidence Act and the settled proposition of law. Hence the order of the trial Court, convicting the accused is not proper and the conviction and sentence imposed on the accused is liable to be set aside on that ground alone.

17.The other eye witness of the victim Suguna is PW-3 Sharma, who turned hostile and he has not supported the case of the prosecution. Therefore the conviction based on the sole testimony of PW-1 by the trial Court is only on conjecture and surmises and the same is liable to be set aside.

18.That apart, the learned counsel for the appellants argued that according to the prosecution one of the accused Meganathan voluntarily surrendered at Thiruvallur Court just prior to the arrest of accused No.2 and the respondent police took him into the police custody from 05.12.2007 to 07.12.2007 and recorded his confessional statement. But he was not been shown as neither as accused nor as witness in this case. In my view, the non-examination of the material witness Meganathan is fatal to the prosecution case and there is no explanation by the prosecution as to why he was not cited as witness in this case. The prosecution is bound to prove the case beyond reasonable doubt.

19.The learned counsel for the appellants argued that the learned trial judge failed to consider the other vital point in this case that none of the witnesses were examined to prove the recovery of M.Os 1, 2, 3 and 5 from the accused 2 and 3. Therefore the recovery of M.Os 1, 2, 3 and 5 cannot be stated as the article of the victim Suguna and the same is not in the proper form of recovery. This Court also carefully perused the records and from the records this Court is not able to see that the prosecution has examined any of the witnesses to prove the recovery of M.Os 1, 2, 3 and 5. Absolutely there is no material on record to show that from where the above said Material Objects were recovered. Since the prosecution failed to establish the above said fact, the accused / appellants are entitled to be acquitted by giving them benefit of doubt. Once, the evidence of the prosecution is found insufficient to hold the conviction of the learned trial Court then the judgment of the learned trial judge is necessarily liable for intervention in the interest of justice.

20.In the result, the Criminal Appeal is allowed and the conviction and sentence upon the accused is set aside. The fine amount paid, if any, shall be refunded to the appellants.

vs

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.TheInspector of Police,
Korattur Police Station,
Chennai.

2.The 2nd Additional District and Sessions Judge,
Thiruvallur at Poonamallee, Thiruvallur District.

3.do-thro Principal District & Sessions Judge,
Thiruvallur at Poonamallee

4.-do-thro Chief Judicial Magistrate, Thiruvallur

5.The Judicial Magistrate, Ambattore

6.The Superintendent, Central Prison, Puzhal, Chennai

7.The District Collector, Thiruvallur

8.The Director General of Police,
Mylapore, Chennai

9.The Public Prosecutor
High Court, Chennai

GMR(CO)
sm:17.1.2018

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