

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.1129 of 2007

Ramesh
3

..Appellant/Accused-

Vs

State rep. By

Inspector of Police,
Sadras Police Station,
Thirukkalukunram Circle,
Kanchipuram
Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records and set aside the conviction and sentence imposed against the appellants on 04.03.2004 in S.c.No.335 of 2003 on the file of the Principal Assistant Sessions Judge, Chengalpet and acquit the appellant.

For Appellant : Mr. P.Pugalenthir

For Respondent : Mr R.Sekar,
Government Advocate

JUDGEMENT

The appellant is A3 in S.C.No.335 of 2003 on the file of the Principal Assistant Sessions Court, Chengalpattu. Totally, there are five accused. All of them stood charged for the offences under Sections 457, 395 r/w. 397 IPC. The trial Court, by judgment, dated 04.03.2004, convicted all the accused under Section 457 IPC and sentenced them to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for 6 months each and convicted them under Section 395 r/w.397 IPC and sentenced them to undergo rigorous imprisonment for 10 years, and the trial Court ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellant/A3, is before this Court with this Criminal Appeal.

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

P.W.1 is the resident of Thesumugipettai, near Thirukalunkundram and doing textile business. On 26.10.2001, while he was sleeping in his house along with his wife and children, at about 12.30 a.m., all the accused came to his house and knocked the door. When P.W.3, brother-in-law of P.W.1, opened the door, all the accused entered into the house and A4 caught hold of P.W.1 and A1 caught hold of P.W.3 and the other accused attacked P.W.3 with knife. Then, they have taken Rs.20,500/- cash, gold jewells, watch, neckless, dollar chain, minor chain. Then the accused pushed them in a room and locked it, and also tied P.W.3, then went away. Thereafter, P.W.1 lodged a complaint under Ex.P.1 before the respondent police station.

3. P.W.8, Sub-Inspector of Police, on receipt of the complaint, registered a case in Crime No.759 of 2001 for an offence under Section 395 IPC and prepared an First Information Report (Ex.P.13) and sent P.W.3 for treatment. P.W.10, Inspector of Police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.2) and drew a rough sketch (Ex.P.15) in the presence of the witnesses and recorded the statement of the witnesses. In the mean time, the accused were arrested in another similar offence by Sadras Police Station in Crime No.326 of 2002, thereafter, they were formally arrested by P.W.10. On such arrest, all the accused had voluntarily given confession and based on the disclosure statement, P.W.10 recovered the stolen articles from P.W.9, Pawn Broker. In the meantime, P.W.7, Doctor, Government Medical college Hospital, Chengalpattu, examined P.W.3 and found the following injuries:

- " 1. Laceration right chest 7 x 2 x 1 cm.
- 2. Abrasion left back 5 x 1 cm"

Ex.P.12 is the Accident Register. Subsequently, on 08.10.2003, P.W.6, Munsif cum Judicial Magistrate, Uthiramerur, conducted test identification parade at Central Prison, Puzhal, where P.W.1 identified A1, A3 and A4. P.W.3 identified A3 and A4. P.W.3 identified A1 and A2. P.W.10 recorded the statement of the Judicial Magistrate and other witnesses and after completion of investigation, he has filed a final report .

4. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, as many as 10 witnesses were examined and 16 documents were exhibited, besides 3 Material Objects.

5. Out of the witnesses examined, P.Ws.1 to 3 are the victims in this case. According to P.W.1, on 26.10.2001, at about 12.30 a.m., when he was sleeping inside his house along with his family members, all the accused came with weapons and when P.W.3 opened the house, all the accused came inside the house and A4 caught hold of P.W.1 and A1 caught hold of P.W.3 and threatened the wife of P.W.1 with dire consequences and then, they removed cash and gold jewells and then locked them inside the room and tied P.W.3 with a rope and thereafter, they went away. P.W.2 is the wife of P.W.1. She has also stated that all the accused came with knife and threatened him and they have removed cash and gold jewells and they locked them in the bathroom and they also tied P.W.3 with a rope and went away. Since, she was pregnant at the time, she did not present for the test identification parade. P.W.3 is the brother-in-law of P.W.1. He has also reiterated the evidence of P.W.1. P.W.4 is a witness to the Observation Mahazar. P.W.5 is the witness to the arrest and confession of the accused and the admitted portion of the confession of A1 to A5 are marked as Ex.P.3 to Ex.P.7 and he is also a witness to the recovery of the stolen articles under the cover of Mahazar Ex.P.8. P.W.6 Judicial Magistrate conducted test identification parade. P.W.7 is the Doctor, who examined P.W.3 and given Accident register Ex.P.12. P.W.8, Sub-Inspector of Police, registered the First Information Report. P.W.9 is the owner of the pawn broker shop, from where the stolen jewells were recovered, but he turned hostile. P.W.10, Inspector of Police, recorded the statement of the witnesses and after completion of investigation, he laid charge sheet against the accused.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not chose to examine any witness or mark any documents.

7. Having considered all the above materials, the trial Court convicted the accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/A3 is before this Court with this Criminal Appeal.

8. I have heard Mr.P.Pugalenth, learned counsel appearing for the appellant and Mr.R,Sekar, learned Government Advocate, appearing for the State and I have perused the records carefully.

9. The learned counsel appearing for the appellant would submit that the recovery was not proved by the prosecution. Eventhough the jewells were recovered from the shop of P.W.9, he turned hostile. P.W.5, Mahazar witness also in his

cross examination stated that he had only signed in the confession statements, but he did not know the contents of the statement. Apart from that, the appellants are convicted under Section 397 IPC, but no weapon was recovered by the prosecution. In the absence of any recovery of weapon, the appellant cannot be convicted under Section 395 IPC. The learned counsel for the appellant further contended that in the test identification parade, P.W.1 alone identified this appellant, where as P.W.3 did not identify him and in the Court also, he did not identify the appellant. Hence, the involvement of the appellant in the occurrence is highly doubtful. On that score, he want to set aside the conviction and sentence.

10. The learned Government Advocate would contend that P.Ws.1, 2 and 3 are victims in this case and all of them consistently stated that while they were sleeping inside the house, all the accused came with dangerous weapon and threatened them and stolen the cash and jewells. Subsequently, based on the disclosure statements of the accused, the stolen materials were recovered, which were also identified by P.Ws.1 and 2. P.W.5, witness to the recovery has also clearly stated about the recording of confession and recovery. So far as the non recovery of the weapon is concerned, P.W.3 is the injured witness and P.W.7, Doctor, and he found bleeding injuries on his head. Apart from that, in the test identification parade, all the witnesses clearly identified the accused. Considering all those materials, the trial Court rightly convicted the appellant. The learned Government Advocate would further submit that the other accused in this case, namely, A1, A2, A4 and A5 filed separate appeals in CrI.A.Nos.625, 749 and 1064 of 2004 and this Court by judgment dated 17.07.2008 dismissed all those appeals, however modified the sentence to 7 years. This accused is also similarly placed accused and on that score also, the appeal is liable to be dismissed.

11. I have considered the above submissions and perused the materials available on record carefully.

12. P.Ws.1, 2 and 3 are the victims in this case. It is the consistent evidence of all the accused that on the date of occurrence, at about 12.30 a.m., while they were sleeping inside the house, all the accused came with knife in their hands and knocked the door and when P.W.3 opened the door, all the accused came inside and one of the accused caught hold of P.W.1 and another accused caught hold of P.W.3 and they attacked P.W.3 with knife and caused injuries and thereafter, they have stolen the cash and gold jewells and they pushed them into a bathroom and locked them and tied P.W.3. Thereafter, all the accused were arrested in another crime and in which, they have voluntarily given a confession and based on the disclosure statement, which was marked as Ex.P.3 to Ex.P.7, the stolen

articles were recovered. Eventhough P.W.9 the pawn broker shop owner turned hostile, P.W.5 , Mahazar witness, who is a witness to the confession and recovery of the stolen articles have clearly stated that on their confession, the stolen articles were recovered. So far as the contention of the learned counsel for the appellant that in the cross examination, P.W.5 has stated that he has only signed in the confession and he has not read the statement, but he is only a attesting witness, he was present at the time of giving confession and signed it, he need not go through the statement. Hence, on that score the evidence of P.W.5 cannot be disbelieved. Subsequently, test identification parade was conducted, in which P.W.1 identified A1 and A3 and P.W.3 identified A2 and A4. Since the witnesses identified the accused in the test identification parade, there is no necessity for them to identify them into the Court once again. So far as the recovery of the weapon is concerned, even though the weapon was not recovered, all the witnesses consistently stated that all the accused were armed with knife and some of the accused also attacked P.W.3 and caused bleeding injuries on his chest. P.W.7 Doctor, who examined P.W.3 has also given a Wound Certificate, Ex.P.12. The medical evidence also corroborates the evidence of P.W.3. Considering the evidence of prosecution, it is clear that all the accused came to the house of P.W.1 with dangerous weapon and attacked P.W.3 and caused injuries and stolen cash and jewells. In the said circumstances, I am of the considered view that the prosecution has clearly established that this accused has also committed the crime and the trial Court also considering the entire materials, rightly convicted the appellant. Apart from that the other similarly placed accused, namely A1, A2 , A4, and A5 filed separate appeals and this Court had dismissed the appeals filed by them and on that score also this appeal is liable to be dismissed.

13. So far as the quantum of sentence is concerned, in the appeals filed by the co-accused, this Court has modified the sentence to 7 years. Considering the fact that the occurrence took place in the year 2007 and the appellant is also a poor person and had a big family to maintain. I am inclined to modify the sentence and the appellant is sentenced to undergo rigorous imprisonment 7 years for the offence under Section 457 IPC and sentenced to undergo rigorous for 7 years under Section 395 r/w. 397 of IPC and also pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 4 weeks.

14. In the result, the Criminal Appeal is partly allowed, the conviction imposed on the appellant/A3 for the offence under Sections 457 and 395 r/w. 397 IPC are confirmed, and the sentence is modified to undergo rigorous imprisonment for 7 years for the offence under Sections 457 IPC and rigorous imprisonment for 7 years for the offence under Section 395 r/w.

397 IPC and to pay the fine of Rs.1000/-, in default, to undergo rigorous imprisonment for 4 weeks. The sentences are ordered to run concurrently. The period of imprisonment already undergone by the appellant shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Assistant Sessions Judge,
Chengalpet

2. The Inspector of Police
Sadras Police Station
Thirukkalukunram Circle,
Kancheepuram

3.The Director General of Police
Mylapore, Chennai-4

4.The District Collector
Chengalpattu

5. The Superintendent of Police
Chengalpet

6.The Judicial Magistrate
Thirukkalukundram Kancheepuram

7.The Superintendent
Central Prison Puzhal Chennai

8 The Public Prosecutor
High Court, Madras

copy to

The Section Officer

Criminal Section High Court Chennai-104

Cr1.A.No.1129 of 2007

aa05/06/2018