

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM:

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

**Criminal Appeal Nos.295 of 2008, 398 of 2008
and 71 of 2009**

Parthasarathy .. Appellant in Crl.A.295/2008

Muthu @ Marimuthu .. Appellant in Crl.A.398/2008

Ponmurugan .. Appellant in Crl.A.71/2009

Vs

State rep. By
Inspector of Police,
Ambathur Police Station,
Chennai
Crime No.443/2006

.. Respondents in all Crl.As.

Prayer in all Crl.As. :- Criminal Appeal filed under Section 374(2) Cr.P.C., to set-aside the judgment dated 28.03.2008 in S.C.No.213 of 2007 on the file of the learned Additional District & Sessions Court, Fast Track Court No.IV, Poonamallee.

For Appellant : Mr. C.Samivel,
in Crl.A.No.71 of 2009 Legal Aid Counsel

For Appellant s : No Appearance
in Crl.A.No.295 & 398
of 2008

For Respondent in all Crl.As. : Mr. R.Sekar,
Government Advocate.

COMMON JUDGEMENT

A1, A2 and A5 in S.C.No.213 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Poonamallee, are the appellants herein. Totally there are 5 accused. They stood charged for the offences under Sections 395 r/w. 397 IPC. Pending trial, A3 died and the trial Court convicted all the accused and sentenced to undergo rigorous imprisonment for 7 years. Now, challenging the above said conviction and sentence, A1 filed an appeal in Crl.A.No.71 of 2009; A2 filed an Appeal in Crl.A.No.295 of 2008 and A5 filed an appeal in Crl.A.No.398 of 2008. When the matter taken up for hearing, the learned Government Advocate would submit that pending appeal, the sole appellant/A2 in Crl.A.No.295 of 2008 died on 28.03.2008. He also produced a report to that effect. Hence, Crl.A.No.295 of 2008 is dismissed as abated.

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

P.W.1 is the victim in this case. On 22.02.2006, while she was in her house along with her physically challenged son , all the accused came to her house and asked her to call her husband, who was working in a bank. While P.W.1 went inside the house to make a call to her husband, all the accused came inside the house and threatened her with knife and asked her to remove all the jewells and they have also threatened her son , who is physically challenged with a knife. Then, P.W.1 has removed all the jewells worn by her and handed over the same to the accused. Thereafter, all the accused fled away. Immediately, P.W.1 informed the same to P.W.3 and also to her husband P.W.2. Thereafter, they lodged a complaint before the respondent police. P.W.7,Sub-Inspector of Police, on receipt of the complaint, registered a case in Crime no.443 of 2006 for the offences under Sections 448 and 384 IPC. Thereafter, P.W.8 commenced investigation engaged sniffer dog and searched for the accused. In the mean time, all the accused were arrested by P.W.9, Inspector of Police, working in the Kodungaiyur Police Station, in respect of a case in Crime No.649 of 2006 and during the course of investigation in the above crime, all the accused have given confessions regarding the present case and based on the disclosure

statements, he recovered a knife and jewells. and remanded them to judicial custody. After completion of investigation, P.W.8 laid a final report.

3. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 9 witnesses were examined and 23 documents were exhibited, besides 9 material objects were marked.

4. Out of the witnesses examined, P.W.1 is the victim. She has stated that while she was alone in the house along with her disabled son, all the accused came there and one of the accused asked her to call her husband as he promised them to get loan from the bank. When she went inside her house to make a call to her husband, all the accused entered into her house and threatened her with knife and asked her to remove all the jewells and they have also threatened her disabled son with knife and fearing attack, P.W.1 removed all the jewells and handed over the jewells to the accused and they fled away . P.W.2 is the husband of P.W.1. According to him, after hearing the news, he came to the house and then complaint has been lodged. P.W.3 is a neighbour. According to him, immediately after knowing the occurrence, he informed the same to P.W.3. P.W.4

is a witness to the Observation mahazar. P.W.5 and 6 are witnesses to the recovery of material objects and they turned hostile. P.W.7 is the Sub Inspector of Police, who registered the complaint. P.W.8 is the Sub-Inspector of Police, attached to the respondent police. Since the accused were arrested in another Crime , he took the accused under police custody and on enquiry, the accused had given voluntary confessions and based on their disclosure statement he recovered the stolen articles. P.W.9, Inspector of Police, Kodungaiyur Police Station, who arrested the accused in another crime number, continued the investigation.

5. 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 examine any witness or mark any documents on their side.

6. Having considered all the above materials, the trial Court convicted the appellants as mentioned in paragraph one of the judgment. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

7. Since the learned counsel appearing for the appellant in CrI.A.No.71 of 2009 has withdrawn his appearance, Mr.C.Samivel, Advocate, was appointed as legal aid counsel for the appellant in CrI.A.No.71 of 2009.

8. I have heard the Mr.C.Samivel, Legal Aid Counsel, appearing for the appellant in CrI.A.No.71 of 2009 and Mr.R.Sekar, learned Government Advocate appearing for the respondent in all Criminal Appeals.

9. The learned counsel appearing for the appellants would contend that in the complaint filed by P.W.1, she did not mention any name of the accused. Subsequently in her evidence, she has stated that A1 is residing in the opposite house and she knows him, and no identification parade was conducted in this case. Apart from that recovery witnesses have also turned hostile and recovery mahazar was also not filed by the prosecution. Hence, the recovery was not proved. Thus, the prosecution has failed to prove the charges against the accused beyond any reasonable doubt and hence, the appellants are entitled for acquittal.

10. Per contra, the learned Government Advocate would contend that the appellant/A1 in CrI.A.71 of 2009 is known to the victim, and he was residing only opposite to her house. In the above circumstances, conducting of test identification parade is totally irrelevant and the accused have been arrested in respect of a some other crime by another police and they had given confession statements and based on that, all the stolen materials were recovered, which were also identified by P.W.1. P.W.9 Inspector of Police, who recovered the stolen articles has also given evidence to that effect and even though the mahazar witnesses turned hostile, that does not affect the case of the prosecution.

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

12. The first contention of the learned counsel for the appellant, is concerned, that the name of A1 is not mentioned in the First Information Report, and it only shows unknown persons. Hence, test identification parade ought to have been conducted. Even though the First Information Report does not contain the name of the accused, P.W.1 in her chief examination has clearly stated that A1 is known to her and he was staying opposite to her house. But

that was not disputed in the cross examination. Since, A1 is known to the accused conducting of the test identification does not arise. So far as the recovery is concerned, as rightly contended by the learned Government Advocate, the accused were arrested by P.W.9, Inspector of Police, Kodungaiyur Police Station in a similar crime, where all the accused had voluntarily given confessions and based on their disclosure statement, all the stolen articles in this case were recovered. P.W.9 , Inspector of Police, who arrested the accused has also clearly deposed all these facts. Subsequently stolen articles were also identified by P.W.1. Hence, the recovery is also proved by the prosecution. Merely because, the recovery mahazar witness turned hostile, on that score alone, the appellants cannot get acquittal. Apart from that it is also submitted by the learned Government Advocate that, the appellants are history sheeted offenders and nearly 16 similar cases are pending against them in various police stations in Chennai city. Hence, I am of the considered view that the trial Court rightly convicted the appellants and hence, I find no illegality or perversity in the judgment passed by the Court below.

13. In the result, the Criminal Appeal Nos.71 of 2009 and 398 of 2008 are dismissed and the conviction and sentence imposed on the appellants/A1 and A5 are confirmed. The trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence if any. The period of imprisonment already undergone by them shall be set off under Section 428 Cr.P.C. The appeal in Crl.A.No.295 of 2008 is dismissed as abated.

14. While parting with the case, I appreciate the services rendered by Mr.C.Samivel, learned counsel who appeared on behalf of the appellant in Crl.A.No.71 of 2009, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

सत्यमेव जयते

30.10.2017

mrp

Index:Yes/ No
Internet: Yes/No

To

1. The Additional District & Sessions Judge,
Fast Track Court No.IV, Poonamallee.

2.The Public Prosecutor,
High Court, Madras.

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V.BHARATHIDASAN,J

mrp



**Crl.A.Nos.71 of 2009, 295 &
398 of 2008**

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