

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 22.12.2016	Date of pronouncing the Judgment : 03.01.2017
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CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Appeal Nos.325 of 2012 & (Crl.M.P.No.11818 of 2016)
and 761 of 2012 & (M.P.No.1 of 2014)

1.Kandeeban

2.Balaji

.. Appellant/Accused 2 and 3
in Crl.A.No.325 of 2012

3.S.Pichandi

..Appellant/Accused No.1
in Crl.A.No.761 of 2012

Vs.

State rep. By
Inspector of Police
CBCID, CC Wing
Chennai-2
(Cr.No.4/2003)

.. Respondent/Complainant

Criminal Appeals filed under Section 374 (2) of Cr.P.C.,
against the conviction and sentence passed on the appellants by
judgment in S.C.No.319 of 2007 dated 24.01.2012 on the file of
Additional District and Sessions Judge, Fast Track Court-II,
Chennai.

For Appellants : Mr.R.Sankarasubbu for appellants in
Crl.A.No.325/2012
Mr.G.Anbuchezeian for appellant
in Crl.A.No.761 of 2012.

For Respondent :Mr.E.Raja, Addl.Public Prosecutor

COMMON JUDGMENT

Even though Crl.M.P.No.11818 of 2016 has been filed, praying
to suspend the sentence of imprisonment imposed in S.C.No.319 of
2007 dated 24.01.2012, on behalf of A-3/Balaji/Appellant in
Crl.A.No.325 of 2012 and the same is listed today, considering
the submissions made on both sides, the above criminal appeals
themselves are taken up for final disposal.

2. Challenge in these criminal appeals is to the conviction and sentence dated 24.01.2012 passed in Sessions Case No.319 of 2007 by the Additional District & Sessions Judge, Fast Track Court-II, Chennai.

3. The case of the prosecution is that on 06.05.2003 at about 11.00 hours, Thiru.G.Kothandaraman, the Sub Inspector of Police, (P.W.1) attached to Counterfeit Prohibition Wing, Chennai, on information by the informant, went to ICF Bus stand along with Police constables and the informant identified the 2nd accused Kandeegan and on search on him, P.W.1 found a polythene bag containing 30 sheets of 10 rupees counterfeit court fee stamps and seized them. On enquiry, A-2 Kandeegan admitted that he received the same from Pitchandi-A-1, who stated that he gave 15 such sheets to the 3rd accused Balaji. On this information, Balaji-A-3, was also apprehended and on the basis of the confession, 15 sheets of 10 rupees fake court fee stamps were seized from him. The Police Party proceeded to No.3/31, Burma Colony, Periyar Nagar, Sembakkam, wherein, they found Tradal Machine (SBCO Ordinary) without any license or permit by the Government, wherein, A-1, had printed Indian Court fee stamps of 1000/- rupees and 50 rupees counterfeit note (one side print) with intent to use the same as genuine. After knowing the evil design of the accused A-2 to A-3, the prosecution has registered FIR against them on the same day against A-1 for the offence punishable under Sections 255, 256, 257, 258, 259 and 489A to D of IPC and against A-2 and A-3, for the offence punishable under Section 259 of IPC. The said FIR has been registered in Crime No.4/2003. The special report prepared in this regard has been marked as Ex.P.1.

4. On receipt of Ex.P.1, the Investigating Officer viz., P.W.10 has registered the FIR, Ex.P.12 and seized the counterfeit court fee stamps and labels M.O.1 series under Form 95 Ex.P.2. Subsequently, P.W.11 took up the investigation and examined the witnesses and recorded the statements. After completing the investigation, he had filed charge sheet against the accused 2 to 3 under section 259 of IPC and against the first accused under sections 255, 256, 257, 258, 259 and 489 A to D IPC on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai-8, C.B.C.I.D., Wing in P.R.C.No.22/2007.

5. The Additional C.M.M., Egmore, after considering the facts that the offences alleged to have been committed by the accused are triable by the Sessions Court has committed the case to the trial court and the same has been taken on file in Sessions Case No.319 of 2007.

6. The trial court, after hearing arguments of both sides and upon perusing the relevant records has framed charges under Sections 255, 256, 257, 258, 259 and 489A to D of IPC against the first accused and under Section 259 of IPC as against the accused 1 and 2, and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 11 have been examined and Exs.P.1 to 15 have been marked. Material Objects 1 to 20 have also been marked.

8. 1. When the accused have been questioned under Section 313 of the Criminal Procedure Code, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. However, no oral and documentary evidence have been let in on the side of the accused. The trial court, after considering the available evidence on record, found the 1st accused guilty and sentenced to undergo 7 years simple imprisonment and to pay a fine of Rs.1000/- each for the offences under Section 255, 256, 257, 258, 259 and 489A to D of IPC (total fine amount Rs.9,000/-) in default to undergo 3 months simple imprisonment and the accused 2 and 3 were sentenced to undergo simple imprisonment for 7 years and to pay a fine of Rs.1000/- each for the offences under Section 259 IPC in default to undergo 3 months simple imprisonment. Aggrieved over the finding of the trial court, the appellants/accused have come forward with the above appeals challenging the finding of the trial court, which found them guilty of the offences alleged.

8.2. It is contended by the appellants in Crl.A.No.325 of 2012 viz., A-2 and A-3 that no witness spoke about the possession of counterfeit stamp by A-2 and A-3 and the evidence of P.W.3 who stood as confession and mahazar witness is not corroborated by any other independent witness. It was not taken into consideration by the trial court. It is also contended that search at the house of A-3 was not conducted properly and P.W.3 was a stock witness. The trial court proceeded in the absence of legal aid for A-2 and A-3 and there was no counsel available for A-2 and A-3 which resulted in non cross examination of the 8 out of 10 witnesses. The finding of the trial court is based on inadmissible confession statement of the accused and the finding of the trial court is liable to be set aside. Even though there was no recovery from 2nd accused/1st appellant, he was convicted wrongly by the trial court on the basis of confession of A-3 which was made before the police. The confession of A-3 is not corroborated. Thus the appellant

seeks to set aside the finding of the trial court and the conviction imposed on them.

8.3 . It is contended by the appellant in CrI.A.No.761 of 2012 viz., A-1 that A-1 has been implicated in this case only on the basis of the confession of A-2 and A-3, but no witness has been examined before the court to prove the arrest and confession of A-1. It is further contended that there is no recovery under Section 27 of the Evidence Act and confessions of A-2 and A-3 are not admissible piece of evidence. Thus the appellant seeks to set aside the finding of the trial court and the conviction imposed on him.

8.4. Even though several grounds have been raised by the learned counsel for the appellants, challenging the finding of the trial court, as against the conviction and sentence passed against the appellants/accused, today, at the time of arguments, learned counsel for the appellants submits that the appellants plead only mercy and not substantially questioning the finding of the trial court in other aspects and in the said circumstances, the learned counsel for the appellants prayed that some leniency may be shown in awarding sentence.

9. In view of the said submission of the learned counsel appearing for the appellants, there is no need to consider the various grounds raised by the appellants challenging the finding of the trial court. On a perusal of the records, it is clear that the trial court has considered oral and documentary evidence placed before it by the prosecution and arrived at the conclusion that the accused are guilty and the said finding is just and proper. No discrepancy is found in the conclusion arrived at by the trial court. In such circumstances, while considering the plea of the appellants that they are not challenging the finding of the trial court and only pleading mercy, this court is inclined to consider the same. In such circumstances, taking into account the age of the appellants/accused and also considering the fact that the appellants have undergone major portion of the punishment imposed against them by the trial court and also taking into account all the attendant circumstances and the foregoing discussion, this court while confirming the conviction is inclined to modify the sentence imposed against the appellants/accused and to that extent this appeal is to be entertained and is liable to be allowed in part.

10. As per the submissions made before this court, it is seen that A-1 S.Pitchandi, has undergone sentence for 5 years 8 months 14 days; A-2 Kandeegan has undergone sentence for 3 years and 28 days of conviction and A-3 Balaji has undergone sentence for 6 years. In such circumstances, the finding of the trial

court holding the accused guilty and convicting them is confirmed. In the light of the above said discussion, now turning to the quantum of punishment, going by the age and also by the other attending circumstances, this court is of the view that the period of sentence already undergone by the appellants/accused 1 to 3 would be sufficient besides the fine imposed by the trial court for the offences above mentioned.

11. In the result, Criminal Appeal Nos.325 of 2012 and 761 of 2012 are partly allowed in the following terms:

(a). The conviction imposed on the appellants/accused 1 to 3 is confirmed.

(b). The sentence of imprisonment on the appellants is reduced to already undergone. There is no modification with regard to fine amount. If the fine amount has not already been paid, the appellants/accused are liable to undergo default sentence imposed by the trial court.

Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

1.The Additional District Session Judge,
Fast Track Court No.II, Chennai.
(now designated as XVI Additional Sessions Judge, Chennai.)

2.The Additional Chief Metropolitan Magistrate,
Egmore Chennai.

3.The Superintendent,
Central Prison,
Puzhal,Chennai.

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

5.The District Collector,
Chennai.

6.The Inspector of Police,
CBCID, CC Wing,
Chennai-2

7.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.G.AnbuChezheian, Advocate Sr.2971

Criminal Appeal Nos.325 of 2012
and 761 of 2012

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