

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 265 of 2011

Avanasi @ Pradhaba

... Appellant/Sole Accused

Vs.

State by

Inspector of Police

Katpadi Railway Police Station,

Vellore District.

(Crime No.100/2010)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. Praying to set aside the judgement passed in S.C. No.225/2011 by the Assistant Sessions Judge-cum-Chief Judicial Magistrate, Vellore dated 15.03.2011.

For Appellant : Mr. M.G.Udayashankar
for M/s.S.Shanthakumari

For Respondent : Mr. G.Ramar
Government Advocate (Crl.Side)

JUDGEMENT

This appeal has been directed against the judgement and order dated 15.03.2011 in S.C. No.225 of 2011 on the file of the learned Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Vellore.

2. In the trial Court, the present appellant being sole accused convicted and sentenced to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.50,000/- in default to under go six months rigorous imprisonment for the offence under Section 392 IPC r/w 397 IPC.

The case of the prosecution in the trial Court is as follows;

3. PW1 Mohammed Navasath is the son of PW2 Kathija. On 01.03.2010 between 2 and 2.30 a.m while PW1 and PW2 were traveling in Mangalore to Chennai Express, near Katpadi, the appellant herein has snatched the hand bag containing gold jewels at knife point.

4. After occurrence, PW1 lodged a complaint before PW8 Soundarajan, Sub Inspector of Police, Katpadi Police Station, after receiving the said complaint given by PW1, a case has been registered in Cr.No 100/2010 for the offences punishable under Section 392, r/w 397 IPC. The complaint given by PW1 and the FIR were marked as Exhibits P1 and P9 respectively before the trial Court.

5. After registering the case, PW8 handed over the case records to PW9, who is the Inspector of Police, Katpadi Police Station for investigation. After receiving the case records from PW8, the investigating officer/PW9 had recorded the statement given by PW1 and PW2. On 02.03.2010 at about 11a.m in the presence of PW4 Sivaraman and PW5 Vasanthakumar, the investigation Officer/PW9 arrested the appellant and recorded the confession given by him. In the confession statement given by the appellant, he had admitted the guilt and willing to hand over the hand bag containing gold jewels. Accordingly, the same was recovered by PW9 under the cover of Mahazar (Ex.P5). Further, the appellant had produced a knife, which was used for the commission of offence in the presence of same witnesses. The said knife recovered under Ex.P6 Mahazar. After recovering those material objects, the investigating officer/PW9 had submitted an application before the learned Chief Judicial Magistrate for conducting the identification parade. Subsequently, as per the order passed by the Chief Judicial Magistrate, PW3 who is the Judicial Magistrate No.I, Walajha had conducted identification parade and submitted his report under Ex.P3. Further, the statement of PW1 was recorded by PW6/Judicial Magistrate No.I, Vellore, thereafter PW9 laid a charge sheet after completing the investigation. In the trial Court, on the side of prosecution 9 witnesses were examined as PW1 to PW9, besides 9 exhibits as Ex.P1 to P9 and 13 Material Objects as M.O1 to M.O 13 respectively. After completing the trial proceedings, the appellant was convicted and sentenced as above. Now challenging the said conviction and sentence, the present appeal has been preferred by him.

6. Today, when the appeal is taken up for hearing, I heard the arguments of Mr.M.G.Udhayashankar, the learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Crl.Side) appearing for the respondent.

7. During the course of argument the learned counsel appearing for the appellant fairly conceded the manner of recovery made by PW9. Further, he did not dispute the ownership of the stolen property.

8. The first and foremost contention raised by the learned counsel for the appellant is that the evidence given by the prosecution witness creates a suspicion over the registration of the case. Further, he added that there is a delay in lodging the complaint before the police officials. According to him, the appellant was falsely implicated in this case.

9. On considering the said arguments with the available records, it is true that as per the evidence given by PW1 and PW2, the complaint was lodged by the PW1 before the Katpadi police officials only after he return from chennai. In the said circumstances, it is necessary to see the delay was property explained or not and also it is necessary to see whether these evidence of PW1 to PW9 are sufficient for holding the prosecution case as true one.

10. In this case, the gold jewels worth about 12 sovereigns were stolen away and the same were recovered from the accused/appellant and the factum of recovery was not disputed by the appellant. In the same way, the prosecution proved that PW1 is the owner of the said property. Being a travelers, it is necessary for PW1 and PW2 to lodge a complaint against the accused on the date of occurrence itself. But in this case, the complaint was lodged belatedly after 3 days. However, that aspect alone is not sufficient to allow the appeal entirely.

11. The second point raised by the learned counsel for the appellant is that during the time of conducting the identification parade, the learned Magistrate had not selected the prisoners equivalent to weight and height of the appellant. So the procedure adopted by the learned Magistrate while conducting the identification parade is not in accordance with the procedure to be adopted.

12. On going through the documents and evidences given by the PW3, the judicial officer who conducted the investigation parade had clearly stated as due to non availability of prisoners in the jail during the time of identification parade, the prisoners having similar features as that of accused/appellant were not selected for conducting the investigation parade. So, the submissions made by the appellant counsel is found correct as per the evidence given by the PW3.

However as per the evidence of PW1 and PW2, they saw the accused at the time of the occurrences itself. In the said circumstances, during the time of trial proceedings, both of them have identified the accused/ appellant. Thus, it is clear that PW1 and PW2 have clearly identified the appellant before the trial Court. Even assuming that the procedure adopted for conducting the identification parade is not in order as alleged by the learned counsel for the appellant, the same shall not spoil the case of prosecution. Further, since the recovery of stolen property and ownership is not disputed, it is the duty of the appellant to establish as under what circumstances the property belongs to PW1 came to his hands. In this aspect Section 114 (a) of Evidence Act is come to play and presumes that the appellant has committed the theft.

13. Hence, this Court without any hesitation, comes to the conclusion that the present appellant has committed the offence under Section 392 IPC and the findings arrived by the trial Court are correct.

14. In the light of the above discussions, this appeal is dismissed. Now, the learned counsel for the appellant made a submission before this Court that the appellant/accused is in jail from the date of judgement i.e w.e.f 15.03.2011 and pleaded for some mercy. In this connection, on considering the age of the accused, he was only 23 years at the time of occurrence and he belongs to the State of Karnataka. Further no other cases were reported against him except this case. Hence, this court observed that the request made by the learned counsel for the appellant is reasonable.

15. In the result, this Court modifies the sentence as 5 years and fine of Rs.1000/-, in default one month simple imprisonment is ordered. If the appellant/accused has already undergone the period of sentence imposed by the trial Court, he shall be released forthwith, unless he is required in connection with any other case and if the appellant/accused has paid fine amount of Rs.50,000/- as imposed by the trial Court, the balance amount of Rs.49,000/- shall be refunded to the appellant/accused. The period of sentence undergone is set off u/s.428 Cr.P.C.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1.The Assistant Sessions Judge-cum-
Chief Judicial Magistrate, Vellore.

2.The Public Prosecutor,
Puducherry.

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