

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 28.06.2018]

[Pronounced on : 10.09.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.Nos.628, 661 and 827 of 2011
and Crl.A.No.369 of 2014

and
M.P.Nos.1, 1 and 1 of 2011 and 2 of 2012

1. Raja @ Rajkamal (A4)
2. Arulraj
3. Siva @ Sivanandam
4. Govindan @ Govindaraj ... Appellants in Crl.A.No.628/2011
/Accused Nos.4, 6, 7 and 8

[Crl.A.No.628/2011 dismissed as
against A.4 as abated as per order of
this Court dated 12.03.2012.]

Balu @ Balamurugan ... Appellant in Crl.A.No.661/2011
/Accused No.3

Santhosh @ Santhosh Kumar ... Appellant in Crl.A.No.827 /
2011
/Accused No.5

Hari @ Harikrishnan ... Appellant in Crl.A.No.369/2014
/Accused No.2

सत्यमेव जयते
... Vs ...

State represented by
The Inspector of Police,
Thiruvarur Police Station,
Thiruvarur District.
(Crime No.29 of 2010)

... Respondent in all
Crl.As./Complainant

Prayer in all Crl.As.: Criminal Appeals filed under Section 374
(2) of Cr.P.C. against the conviction and sentence passed by the
learned Assistant Sessions Judge, Thiruvarur, in S.C.No.117 of
2010 by judgment dated 29.08.2011 convicting the appellants

under Section 395 IPC and sentencing them to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5000/- each in default to undergo six months simple imprisonment.

For Appellants in

Crl.A.Nos.628 & 827/2011 : Mr.P.Pugalenthi

For Appellant in

Crl.A.Nos.661/2011 : Mr.J.Srinivasan

For Appellant in

Crl.A.Nos.369/2014 : Mr.P.Vajravelu

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

COMMON JUDGMENT

The appellants in Crl.A.No.628 of 2011 are accused Nos.4, 6, 7 and 8; appellant in Crl.A.No.661 of 2011 is accused No.3; appellant in Crl.A.No.827 of 2011 is accused No.5 and appellant in Crl.A.No.369 of 2014 is accused No.2 in S.C.No.117 of 2010 on the file of the learned Assistant Sessions Judge, Thiruvavur, Thiruvavur District, and they stand convicted for the offence under Section 395 IPC and sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of Rs.5000/- each in default to undergo six months simple imprisonment. Aggrieved by the said conviction and sentence, the appellants in all the criminal appeals/accused Nos.4, 6, 7, 8, 3, 5 and 2 respectively have preferred the above four Criminal Appeals before this Court.

2. Totally, there were eight accused in this case. In respect of the first accused namely, Panneer @ Panneerselvam, the case was split up and it was taken on file as P.R.C.No.20 of 2010. Pending appeal, since the fourth accused namely, Raja @ Rajkamal, who is the first appellant in Crl.A.No.628 of 2011 had died, the charges against him are abated. Now, this Court has to consider the criminal appeals only in respect of Accused Nos.2, 3, 5, 6, 7 and 8.

3. The case of the prosecution is that on 25.01.2010 at about 10.00 p.m., at Andiyampalayam, Coimbatore District, the de facto complainant namely, Malarvizhi (P.W.1) and her Son Karthik (P.W.2) were sitting in the hall and watching Television, and at that time, all the accused with a criminal conspiracy to commit dacoity in the house of P.W.1, came in a Tata Sumo bearing Registration Number TN-02-K-7777 and while the third accused Balu alias Balamurugan was standing in the Tata Sumo vehicle, the other 7 accused have entered into the front gate which was unlocked. At that time, accused Nos.1 and 2, by showing knife,

have criminally intimidated P.W.1-Malarvizhi and P.W.2-Karthick and tied their hands behind their body and committed looting the property including thali chain, ear ring, nose stud and taken away a DVD player and also decamped with the gold jewels to the tune of Rs.2,25,000/- and also taken away a silver kolusu, ladies watch and other items of listed property and thereby, committed the offence under Section 395 of I.P.C. Hence, P.W.1 has given a complaint before the respondent police and on the basis of the said complaint, the respondent police has registered a case in Crime No.29 of 2010 for the offence under Section 395 of IPC.

4. Though, final report has been filed against 8 accused, after framing of charges, since the 1st accused namely Panneer alias Panneerselvam was absconding, the case was split up and it was taken on file as P.R.C.No.20 of 2010. Since the fourth accused namely, Raja @ Rajkamal died, as against 7 accused, case has been dealt with in S.C.No.117 of 2010.

5. In order to establish the case, the prosecution examined P.Ws.1 to 11; marked Exs.P.1 to P.25 and produced M.Os.1 to 19. On behalf of the accused, no witness was examined and no document was marked. The accused were questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances and they denied their complicity.

6. The Trial Court, after analyzing the oral and documentary evidence, found the accused guilty under Section 395 IPC and sentenced them as already stated above.

7. The learned counsels appearing for the appellants in all the criminal appeals submitted that the appellants have been falsely implicated in this case. It is further submitted that the trial Court ought to have acquitted the appellants, since the witnesses P.Ws.1 and 2 are said to have witnessed the occurrence in the night hours and the accused were not known to them prior to this occurrence. The learned counsels appearing for the appellants in all the criminal appeals also submitted that the Court below erred in convicting the appellants since the alleged confession given by one Siva @ Sivanantham to the police when he was arrested does not contain the disclosure portion leading to the discovery effected which consequently led to the recovery of stolen articles. Hence, the confession is hit by Section 27 of the Indian Evidence Act and the alleged recovery, which is said to have been effected from the Tata Sumo, which carried so many persons will not amount to recovery effected under Section 27 of the Indian Evidence Act.

8. Heard the learned Government Advocate (Crl.Side) and perused the materials available on record and also the judgment

passed by the trial Court.

9. The point for consideration is:

(i) Whether the conviction passed by the trial Court for the offence under Section 395 IPC is sustainable in law?

(ii) Whether the sentence awarded by the trial Court under Section 395 IPC is excessive? and needs modification.

Point No.1

10. On consideration of the oral evidence of P.W.1 and P.W.2, who were victims and in whose house, the dacoity was committed by all the accused at knife point after tying both P.W.1 and P.W.2 and while, the third accused putting them into fear of death had committed the looting of the valuable property in their house and also taking note of the fact that all the accused have been identified by P.W.1-Malarvizhi, both in the test identification parade conducted by P.W.6-Judicial Magistrate and also in the Court during the examination of P.W.1 and in the absence of anything during the trial to discredit the evidence of P.W.1 and P.W.2 and the manner of the evidence given by P.W.1 and P.W.2, who had clearly identified all the accused in the Court as well as in the identification parade conducted by the P.W.6-Judicial Magistrate, and also taking note of the evidence of P.W.3 and P.W.4, who are neighbours and who have seen the accused fleeing with property from the house of P.W.1 and further P.W.4-Somanathan, the retired Head Master, who had witnessed the vehicle was moving from the gate of the house of P.W.1, and the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 are found to be clear and cogent with regard to the act of the accused in the house of P.W.1 and P.W.2 in taking away the valuable gold, silver and electronics goods and moving of the Tata Sumo vehicle from the house gate of P.W.1 was clearly spoken by P.W.3 and P.W.4.

11. While, P.W.4 and P.W.6, who are the attestors of the observation Magazar and Seizure Magazar respectively, have clearly deposed regarding the recovery of the stolen goods from the place and identified the respective goods based upon the admissible portion of confession statements under Ex.P3, Ex.P5, Ex.P11.

12. It remains to be stated that P.W.11, the Subordinate Civil Judge while serving as a Judicial Magistrate has conducted Test clarification parade on three different occasions namely 11.02.2010, 11.03.2010 and 30.03.2010 wherein P.W.1 has categorically and clearly identified 2nd and 3rd accused during

the identification parade and she also identified all the accused during the time of the trial, thereby lend support to the prosecution theory.

13. It remains to be stated that P.Ws.1 and 2, who are all affected parties, have clearly deposed regarding the act of committing decoity during the night hours by all the accused which is found to be natural, reliable and clearly supports the case of the prosecution. Both P.Ws.3 and 4, who are the independent witnesses, have no way connected with the family of P.W.1 besides after close scanning and scrutinizing of the cross-examination, I find nothing on record to discredit their evidence regarding lifting all the decamping of the property from the house of P.W.1 and also the search conducted by the police clearly supports the limb of the prosecution theory.

14. It remains to be stated that P.W.1, both in the test identification parade conducted by the learned Judicial Magistrate on all the three occasions and as well as during trial in the witness box, has categorically admitted that the accused had shown the knife and also categorically identified the persons, who tied the hands and also deposed who had put cloth in their mouth and the act of committing decoity in their house inspires the confidence of this Court to hold that the version of P.Ws.1 and 2 is natural and trustworthy.

15. Considering the gravity of the offence i.e., robbery of gold jewels and other valuable articles with knife point, committed by all the accused, the trial Court has correctly convicted the accused for the offence under Section 395 of IPC and hence, the reasons given by the trial Court for convicting all the appellants are acceptable. This Court does not find any infirmity in the Judgment passed by the trial Court convicting the appellants/Nos.2, 3, 5, 6, 7 and 8. This Court is also of the considered view that the prosecution has proved its case beyond reasonable doubt as against the charges levelled against all the accused by letting in sufficient evidence. Therefore, the conviction imposed on all the appellants/accused Nos.2, 3, 5, 6, 7 and 8 by the trial Court is confirmed.

Point No:2

16. The learned counsels appearing for the appellants in all the criminal appeals had prayed for leniency with regard to the sentence of imprisonment and submitted that accused Nos.2, 3, 5, 6, 7 and 8 had already been in jail for a period of seven years.

17. It is a case of decoity and charge under Section 395 IPC is held to be proved beyond reasonable doubt, for the

reasons stated in the preceding paragraphs. While coming to the quantum of sentence, the accused are in the age group of 20 at the commission of the offence and they are inside right from the trial and also pending appeal. Since it is a charge under Section 395 IPC, which is against the society, I am not inclined to accept the plea of the learned counsels appearing for the appellants in all the criminal appeals to give set off to the period already undergone. However, taking into consideration all the entirety of the facts and circumstances of the case and also weighing the gravity of the crime with the age of the accused and the period they have already undergone, I am of the considered view that the sentence may be reduced to eight years.

18. In the result,

[i] The above Criminal Appeals are partly allowed;

[ii] The conviction passed by the trial Court in S.C.No.117 of 2010 is confirmed;

[iii] The sentence awarded by the trial Court is reduced to eight years rigorous imprisonment.

[iv] The period of sentence already undergone by them shall be given set off.

[v] Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Jrl/nvi

To

1. The Assistant Sessions Judge,
Thiruvarur.
2. The Inspector of Police,
Thiruvarur Police Station,
Thiruvarur District.
3. The Public Prosecutor,
High Court, Madras.

4. The Superintendent,
Central Prison, Trichy.

5. The Section Officer,
Criminal Section, High Court,
Madras.

+2cc to Mr.P.Pugalenth, Advocate, S.R.No. 62499

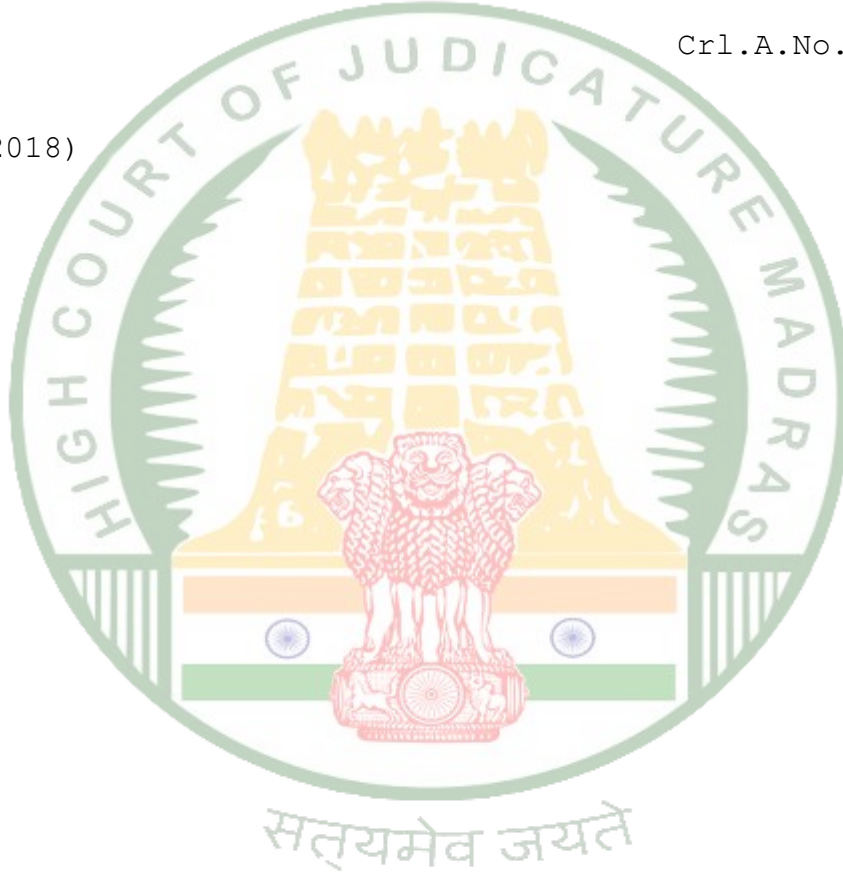
+1cc to Mr. J.Srinivasan, Advocate, S.R.No. 63262

CrI.A.Nos.628, 661 & 827/2011

and

CrI.A.No.369 of 2014

GN(18/09/2018)



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