

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Crl.A.No.146 of 2009

Bhaskar

.. Appellant/Sole
Accused

Vs.

State rep.by
Inspector of Police,
Avadi Railway Police Station,
Avadi, Chennai.

..Respondent/
Complainant

Prayer:

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the sentence imposed by the Additional Sessions Judge, Fast Track Court-I, Poonamallee in S.C.No.251/2008 dated 30.01.2009 for the offence under Section 392 r/w 397 of IPC and acquit the accused.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Ms.T.P.Savitha
Government Advocate (Crl.side)

J U D G M E N T

The appeal has been directed against the judgment and the order of conviction dated 30.01.2009 in S.C.No.251/2008 on the file of Additional Sessions Judge, Fast Track Court-1, Ponnammallee.

2. In the trial Court, the appellant herein is the sole accused, after concluding the trial proceedings, he was convicted for the offence under Section 392 read with 397 IPC and sentenced to undergo 7 years of R.I. Against which, the appellant is before this Court with this appeal.

3. Prosecution in brief is as follows:-

i) P.W.1 S.Saranya is residing in Railway Colony, Tiruvallur and she was working as a staff in software company, Chennai. On 08.05.2008, at about 10.45 pm., when she was returning from Perambur, the train in which she travelled reached the Avadi railway station. The appellant on showing the

knife, threatened her to give the chain which was worn by P.W.1. Since P.W.1 refused to give the chain, the appellant forcibly took the chain from the possession of P.W.1 and ran away from the scene of occurrence.

ii) After seeing the same, P.W.1 shouted and followed the appellant in order to catch him. P.W.5 Sridharan, working as Inspector of Police, P.W.2 Selvam, P.W.3 Kuberan who are the fruit vendors standing in the platform, after hearing the shouting caught the appellant. Meanwhile, P.W.4 Sekar who is the Head Constable in FPF, Police station came occasionally to the place of occurrence joined with P.W.2 and P.W.3 and caught the appellant. After securing the appellant, P.Ws.1 to 4 handed over the appellant before P.W.5 P.Sridharan who is the then Inspector of Police, Perambur Police Station.

iii) On production of the appellant, the chain which was stolen from the P.W.1 and the knife which was used for threatening P.W.1 were recovered under Form 95, for which P.W.4 Sekar and one Selvam have attested as witness in the Form 95.

iv) Further, P.W.1 gave a complaint to P.W.5 under Ex.P1. After receiving the complaint, P.W.5 registered a case in Crime No.71/2008 under Section 397 IPC. Ex.P.2 is the copy of printed FIR.

v) On enquiry, the appellant voluntarily gave confession in which he admitted the guilt. Further, in this case, the Form 95 which is the document for recovering the material object was exhibited as P.3 and P.4.

vi) Thereafter, P.W.5 examined the witnesses and recorded the statements of witnesses and subsequently he handed over the case records to P.W.6 for further investigation.

vii) P.W.6 the then Inspector of Police, Perambur Circle, received the case records and laid a final report for the offence under Section 397 IPC.

viii) In the trial Court, after receiving the case records, the learned Judicial Magistrate, Ponnammallee assigned the case numbers. Thereafter, after the appearance of appellant, he furnished the copy of the document which are all relied by the prosecution and finally he committed the case to the Court of Sessions, Ponnammallee for disposal according to law.

ix) In Principle Sessions Judge, Poonamalle, the case has been taken on file as S.C.No.251/2008 and made over the same to the FTC-1 for disposal. In the said Court, after the appearance of appellant, he was questioned with regard to the allegations levelled against him for which he pleaded not guilty, the charges have been framed against the appellant for the offence under Section 392 read with 397 IPC. In order to substantiate the case of prosecution, 6 witnesses were examined

as P.Ws.1 to 6. Further, 5 documents are exhibited as P.1 to P.5. The stolen chain and the knife which was recovered by P.W.5 are ranked as MOs.1 and 2. After recording the evidence of P.W.1 to 6, the appellant was questioned under Section 313(1) (a) of Cr.P.C., with regard to the incriminating materials available in the evidence given by prosecution witnesses, for which the appellant denied and pleaded he is not involved in the alleged offence. After concluding the said trial proceedings, the learned Additional Sessions Judge, FTC-1, convicted the appellant and sentenced as stated above.

4. Today, when the appeal is taken up for consideration, I have heard the arguments of Mr.R.C.Paul Kanagaraj, learned counsel for the appellant and Ms. T.P.Savitha, learned counsel for the respondent.

5. The first and foremost contention raised by the appellant is that the evidence given by P.W.1 in the trial Court was corroborated through the evidence of P.W.2 to 4. Actually, P.W.2 and 3 being the fruit vendors, they are running their life under the mercy of railway police. So in order to get the mercy from the railway police, they have deposing evidence against the appellant, only on the instruction given by the police. Further, he submitted that P.W.4., Head Constable, during the time of giving evidence had stated that at the time of occurrence, he is not having any packet note, which was used for writing the day to day affairs of his official duty. Therefore, the evidence given by the said witnesses is unbelievable. According to him, this case has been foisted against the appellant for the purpose of passing detention order. Therefore, considering the above contradictions available in evidence of P.Ws.2 to 4, the appellant is entitled to the relief of acquittal.

6. On the other hand, the learned Government Advocate would submit that the minor contradictions available in the evidence of P.W.2 to 4 does not come up to the level of disbelieving the prosecution case. Thereby, he prayed to dismiss the appeal.

7. Now, on considering the submissions made by either side, it is true P.Ws.2 and 3 have admitted in their evidence that they are the fruit vendors.

8. Now, on considering the said aspect with the case on hand, the alleged occurrence had happened at about 10.30 pm in night hours. In this regard, P.Ws.2 and 3 categorically stated only at the time they were returning to their home, after finishing the daily job the occurrence had happened. So the said evidence given by P.Ws.2 and 3 appears to be natural and reliable one. The other witness examined as P.W.4., admitted that he is not having the packet diary at the time of securing the appellant. As per the case of prosecution, he is the person

attested in the Form 95 as a witness to the recovery of material object. If really P.W.4 is not present at the time of occurrence, it is impossible to sign in the Form 95. Moreover, on considering the time of occurrence, it is not necessary to write a packet diary for the occurrence alleged in this case. Furthermore, P.W.4 came to the occurrence place casually when at the time of returning to his home. Thus, securing the appellant is not an official duty, for him. The non possession of diary is no way dilute the case of prosecution.

9. Moreover, in order to decide this type of cases, isolation of the particular position of the evidence shows a way to the appellant for escaping from the clutches of law.

10. Further, P.W.2 to 4 were examined in the Court on 19.12.2008 after lapse of seven months from the date of occurrence. So it is probable to arise a minor contradiction in their evidence. In fact, on whole reading of the evidence given by P.W.2 to 4 clearly proved the alleged occurrence.

11. Apart from that, without any relationship with the police officer, there is no possibility for P.W.1 for lodging the false complaint against the appellant. Accordingly, this Court hold the findings arrived by the trial Court is found correct and the interference of this Court is not necessary for disposing of this appeal.

12. However, the learned counsel appearing for the appellant prayed to modify the sentence and for showing the leniency towards the appellant.

13. In this regard, the alleged offence had happened in the year 2008, subsequently the appellant facing this case till today. Therefore, it is a fit case give some leniency with regard to the punishment.

14. Hence, while confirming the conviction for the offence under Section 392 r/w 397 IPC, the sentence awarded is modified to five years R.I. It is reported that appellant is on bail. Bail bonds, if any, executed by the appellant would remain cancelled forthwith and the trial Court is directed to secure the presence of appellant and commit him to the prison to serve the rest of the sentence imposed on him.

15. Accordingly, appeal is partly allowed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Avadi Railway Police Station,
Avadi, Chennai.
2. The Additional Sessions Judge, Fast Track Court-I,
Poonamallee.

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CS/04/09/18



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