

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2018

PRONOUNCED ON : 22.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.A.No.289 of 2004

Rajkumar ... Appellant / Accused No.3

-Vs-

State Represented by
The Inspector of Police,
Vengal Police Station,
Thiruvallur District.
(Crime No.411 of 1999)

... Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, praying to set aside the judgment and sentence passed by the learned Additional Sessions Judge, (Fast Track Court-5), Thiruvallur District in S.C.No.106 of 2001, dated 27.01.2004.

For Appellant : Mr.A.M.Rahamath Ali

For Respondent : Mrs.V.Saratha Devi,
Government Advocate (Crl.Side).

ORDER

The convicted third accused, namely, Rajkumar, is the appellant herein. He has filed this Criminal Appeal to set aside the judgment and sentence passed by the learned Additional Sessions Judge, (Fast Track Court-5), Thiruvallur District in S.C.No.106 of 2001, dated 27.01.2004.

2.The respondent police filed final report against the accused 1 to 4 in Crime No.411 of 1999 for the offences under Sections 458, 392 r/w 397, 394 and 458 r/w 34 IPC and the same was taken on file as P.R.C.No.07 of 2000 and made over to the learned Additional Sessions Judge, Fast Track Court No.5, Thiruvallur District and numbered as S.C.No.106 of 2001. After

trial, all of them are convicted in respect of same offences and hence, this Criminal Appeal has been filed by the third accused.

3.The case of the prosecution is that on 18.11.1999 at about 11.00 P.M., the accused persons viz., Sasi (A1), Arul (A2-died on 12.03.2013), Rajkumar (A3-Petitioner herein) and Mani (A4) committed robbery of gold jewels totally weighing about 63 sovereigns, cash for a sum of Rs.23,000/- and an Yamaha Motor Cycle, belonging to the family of the defacto complainant and while committing the said robbery, the accused 1 to 3 being armed with knives, which are deadly weapons displayed the same to frighten the witnesses, Ravi Rao / defacto complainant, Thirupuram Naidu and Kalavathi.

4.In the course of the same transaction and in furtherance of the said common intention of the accused 1 to 4, while jointly concerned with the accused 2 and 3 in committing robbery of the properties of the family of the said witnesses, the first accused attempted to cut the defacto complainant, by raising the knife his hand for cutting the defacto complainant and then the said Kalavathi in order to prevent the second accused from cutting her husband / defacto complainant with a knife, attempted to snatch the knife from the first accused, and while doing so, the said Kalavathi sustained a bleeding injury on her right thumb due to the knife wielded by the first accused. Thus, the second accused voluntarily caused hurt to the said Kalavathi, while he was jointly concerned with the accused 1 and 3 in committing robbery in the said house.

5.On the complaint, a case was registered in Vengal Police Station in Crime No.411 of 1999 for the offence under Section 394 IPC on 19.11.1999 at about 06.00 hours and the same was taken up for investigation. The then Inspector of Police visited the scene of occurrence and prepared Observation Mahazar / Ex.P.2 and draw Rough Sketch / Ex.P.22 in the presence of witnesses as well as examined the witnesses and recorded their statements. Then, on 07.12.1999, he arrested the second accused Arul and recorded his confession statement in the presence of witnesses as well as seized the case related properties under cover of seizure mahazar. Based on the confession of the second accused, he arrested the accused 1, 3 to 9 at Seethencheri Forest Area, on the same date at about 11.00 hours and recorded their confession statements. The police laid charge sheet against the accused 1 to 4 before the learned Judicial Magistrate No.I, Thiruvallur and the same was taken on file as P.R.C.No.7 of 2000. Then, this case was committed to the learned Additional Sessions Judge, Fast Track Court-5, Thiruvallur in S.C.No.106 of 2001.

6.The learned trial Court charged the appellant / third accused under Sections 458 and 392 r/w 397 IPC after conducting due trial and by its judgment dated 27.01.2004 in S.C.No.106 of 2001 found the appellant / third accused guilty. He sentenced to undergo rigorous imprisonment seven years and to pay a fine of Rs.1000/- in default to undergo six months simple imprisonment for the offence under Section 458 IPC and sentenced to undergo 7 years rigorous imprisonment for the offence under Section 392 r/w 397 IPC and ordered that the above sentences shall run concurrently.

7.The above said conviction and sentence passed by the trial Court is now under challenge in this Criminal Appeal.

8.The learned counsel appearing for the appellant / third accused submitted that:

i)identification parade conducted in the Court is unbelievable.

ii)recovery of property alleged by the prosecution is not proved in the manner known to law.

iii)the finger print report as spoken to by the official prosecution witnesses cannot be accepted and the same is bereft of legal proceedings.

Hence, he contended that the appeal may be allowed by setting aside the order of conviction passed by the trial Court.

9.The learned Government Advocate (Crl.Side) would submit that the accused 1 and 4 have served their sentence and thus, the case is confined only with the third accused alone and made submissions in favour of the judgment of the trial Court.

10.Points for consideration are whether the order of conviction passed by the learned Additional District and Sessions Judge is sustainable in law or not? and whether the quantum of sentence is excessive or not?.

11.Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record carefully.

12.The third accused stood charged for the offence under Sections 458 and 392 r/w 397 IPC. To prove the charges, the prosecution has examined P.Ws.1 to 25 and marked Exs.P.1 to P.26 and also material objects M.O.1 to M.O.27.

13.The case of the prosecution in brief is that on 18.11.1999 at about 11.00 P.M., with the common intention of committing robbery by causing hurt, the accused 1 to 3

trespassed into the house of P.W.1 and P.W.2. The accused 1 to 3 were found guilty for the offence punishable under Section 458 IPC and the fourth accused was found guilty under Section 458 r/w 34 IPC. In furtherance of the common intention entered into the house of P.W.1 with knives, robbed 63 sovereigns of jewels, Rs.23,000/- and a motorcycle and threatened P.Ws.1 and 2 and one Thirupuram Naidu. During the course of the transaction, the first accused attempted to assault P.W.1 with knife and when P.W.2 tried to snatch the knife from the first accused, she has sustained injury.

14.It is seen from the evidence of the prosecution that P.W.1 and P.W.2 are inmates of the house. While P.W.3 Saralabai is the mother of P.W.1, P.W.4 to P.W.7 are the neighbors, who deposed that they have witnessed the accused, leaving from the house immediately after the occurrence. P.W.6 is the uncle of P.W.1 to whom P.W.1 passed an information about the alleged committal of offence of robbery in his house and thereafter, with the help of P.W.7, they went to the police station and lodged the complaint. P.W.8 and P.W.9 are the attester of the observation mahazar. P.W.10 is the photographer.

15.It is seen from the records of the trial Court that after the receipt of the complaint, the investigating officer went to the scene of the occurrence and also the service of the finger print experts are pressed into service. In the routine check up held in the highways, they have arrested the accused on suspicion ground and thereafter, identification parade was conducted and thereafter, those accused has been taken to the place of the occurrence for demonstration. Thereafter, it appears that on the request made by P.W.12, learned Judicial Magistrate, identification parade has been conducted.

16.Admittedly, identification parade has been conducted by P.W.12 learned Judicial Magistrate only after 3 ½ months. Taking note of the fact that both P.W.1 and P.W.2 have categorically admitted in the cross-examination that after the arrest of the suspected accused, all the accused have taken to the place of the occurrence for demonstration of commissioner of crime.

17.Taking note of the answer for consideration, the learned Sessions Judge has held that test identification parade conducted by P.W.12, learned Judicial Magistrate cannot be taken into consideration for fixing the liability on the accused, in view of the fact that even before conducting identification parade, the accused have been shown to the victim, namely P.W.1 to P.W.3.

18. In view of the above background of finding of the learned Sessions Judge, the first point raised by the learned counsel appearing for the appellant that the identification parade cannot be given importance, does not arise for consideration, since the test identification parade has already been negated by the trial Court itself.

19. As stated supra, the accused 1 and 4 have already served the sentence and the second accused died. Now, the case is confined only to the third accused.

20. On perusal of Exs.P.10 to P.16 coupled with the oral evidence of P.W.20 Vijayan and P.W.21 Sivarao, who are the attestors of the seizure mahazar, which has been let to recovery of M.O.1 to M.O.27 representing both valuable and immovable properties, the trial Court has come to the conclusion that the seizure of the properties has been proved in the manner known to law. Besides, based upon the oral evidence of P.W.13 to P.W.15, who are the receivers of the stolen property and from whom M.Os.6, 8, 10, 12 and 13 have been recovered and based upon the admissible portion of the confession statement in Exs.P.23 to P.26 and on re-appraisal of the evidence of P.W.13 to P.W.15 and P.W.20 and P.W.21 and after going through the contents of Exs.P.10 to P.16 and also Exs.P.22 to P.26, this Court is of the considered view that the alleged confession statement, leading to the factum of recovery of stolen properties and seizure of those properties in the presence of the independent witnesses have been proved by the prosecution in the manner known to law. Hence, this Court holds that the recovery of stolen property has been proved in the manner known to law. Accordingly, this Court has no hesitation to hold that by adducing the above stated oral and documentary evidence, the prosecution has proved the recovery of stolen property in the manner known to law and a similar finding rendered by the learned Sessions Judge does not warrant any interference as the same does not suffer from any irregularity or illegality. Accordingly, the second contention raised by the appellant stands negated. Now, the sole point that remains for consideration is whether this appellant / third accused has nexus in the crime.

21. The Government Advocate (Crl.Side) has drawn my attention to the finger print report given by P.W.19. The opinion given by the fingerprint expert is marked as Ex.P.19 and the covering letter of all these documents is marked as Ex.P.20.

22. The learned counsel appearing for the appellant would contend that the scientific expert, who lifted the sample from the scene of the crime was not examined before the Court and hence, he contended that the same is fatal to prosecution.

23.This Court has given its anxious consideration for the said contention, however, to dismay could not uphold the same for multiple reasons, they are as under:-

P.W.19 Ganesan, who is the Deputy Superintendent of Police (Fingerprint Division) has categorically stated that in the year 1999 while he was serving as Deputy Superintendent of Police in the Fingerprint Bureau, at request of the Inspector of Vengal Police Station, on 19.11.1999, he along with his subordinate Inspector one Raghuvaran went to the scene of occurrence for lifting the sample if any available. As such being the head of the unit, he also accompanied for lifting of the sample. On 20.11.1999 he sent the report to the Inspector of Police, Vengal Police Station and directed the Raghuvaran to submit the photo copy of the fingerprints, which were marked as K.1 to K.7 and taken on 24.11.1999 to the Court. Subsequently, they received an information that in Crime No.440 of 1999, the fingerprint of the previous accused has been found to be tallied and on verification, they found that the fingerprint of one Rajkumar, S/o. Munusamy, who is the appellant herein has been tallied with the K.4 and K.6 taken from the scene of the crime. Since the said Inspector, namely, Raghuvaran died, he deposed about lifting of the sample fingerprint from the bureau and table and other article in that scene of the occurrence. Hence, in view of the specific evidence of P.W.9 regarding the discharge of his official duty in connection with the collection of the sample from the scene of the crime along with his Subordinate Inspector, Raghuvaran, who is dead before examination in the trial and thus, in view of the clear and cogent evidence of P.W.9, Deputy Superintendent of Police, this Court finds that the contention of the learned counsel appearing for the appellant that non-examination of the the said Raghuvaran as fatal cannot be uphold and in view of the specific evidence of P.W.9, who deposed regarding the lift of the fingerprint from the scene of the crime and also comparing the same with the accused's fingerprint in Crime No.440 of 1999 and opinion was given by the fingerprint expert under Exs.P.18 to P.20, this Court finds that third accused's fingerprint has been found to be tallied and another fingerprint expert, who is also on the field i.e., P.W.22 another Inspector of Police fingerprint division has also deposed in the similar manner. Thus, this Court holds that lifting of the fingerprint from the scene of the crime and marking them as Ex.P.18 and opinion of P.W.19 are proved the prosecution in the manner known to law and hence, as such they are held to be admissible in evidence.

24.Thus, this Court finds that on close perusal and scanning of Ex.P.17, it is seen that K.1 marked fingerprint has been tallied with S.1 marked fingerprint and from Ex.P.18, K.4 marked fingerprint has been tallied with S.2 marked fingerprint

and opinion was given by the said Raghuvaran and it was duly attested by the Deputy Superintendent of Police, who was examined before the Court as P.W.19. In view of the tally of the accused fingerprint with that of the fingerprint lift from the scene of the crime, the trial Court has rightly come to the conclusion that the said document Exs.P.18 to P.20 coupled with the oral evidence P.W.19 and P.W.22 clearly established the nexus of the third accused with the alleged crime cannot be interfered with in the absence of any contradictions or want of legal sanction.

25.Thus, this Court finds that P.W.1 and P.W.2, who are the inmates of the house in whose house robbery has been committed in the night have identified the accused in the open Court and the scientific report given by the fingerprint experts P.W.19 and P.W.22 coupled with the documentary evidence Exs.P.18 to P.20 proves the presence of the accused on the edge of committing the offence and based on the evidence of P.W.13 to P.W.16 coupled with the recovery of material objects M.O.6, 8, 10 and 12 and Exs.P.10 to 16, the prosecution has clearly proved the seizure of the stolen articles, which has been identified by P.W.1 as that of the others.

26.Hence, this Court holds that the finding of the learned Sessions Judge that the prosecution has proved the involvement of the appellant / accused in the crime based upon the scientific report and also based upon the confession statement of the accused, cannot be interfered with.

27.In the result, this Criminal Appeal is dismissed. The order dated 27.01.2004 in S.C.No.106 of 2001 by the learned Additional Sessions Judge, (Fast Track Court-5), Thiruvallur District is confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Myr

To

1.The Additional Sessions Judge,
(Fast Track Court-5),
Thiruvallur District.

2.The Inspector of Police,
Vengal Police Station,
Thiruvallur District.

3.The Additional Public Prosecutor,
Madras High Court, Madras.

4.The Superintendent of Police,
Vellore Central Prison,
Vellore.

5.The Judicial Magistrate No.I,
Thiruvallur, Thiruvallur District.

6.The Chief Judicial Magistrate,
Thiruvallur.

7.The Section Officer,
Criminal Section Records
High Court, Madras.

8.The District Collector/District Magistrate,
Thiruvallur.

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

+1 cc to Mr.A.M.Rahamath Ali, Advocate Sr.No.5270

Order made in
CRL.A.No.289 of 2004

BR(CO)
CSL/08.03.2019