

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2019

PRONOUNCED ON : 20.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.23 of 2011

1.Gopi
2.Gajendran
3.Kalaiselvan

Appellants

Vs

State by Inspector of Police,
Bhavani Police Station,
Erode District
(Crime No.281 of 2008)

Respondent

Prayer:- This Criminal Appeal is filed under Section 374(2) Cr.P.C., to set aside the judgment of the learned Additional District and Sessions Judge (Fast Track Court No.4) Bhavani, Erode District made in S.C.No.116 of 2009 dated 13.05.2010 and acquit the accused/appellant herein from the charges.

For Appellant : Mr.G.Perumal Pandian
(Legal aid counsel)

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

JUDGMENT

This Criminal Appeal is directed against the judgment of the learned Additional District and Session Judge (Fast Track Court - IV), Bhavani, Erode District, passed in S.C.No.116/2009 dated 13.05.2010.

2.The case against the appellants as per the prosecution is that, on 21.06.2008 early morning at about 3.00 am in the house of Kannupaiyan, Door No.945/1.811, Arttrukarupparayan Koil, Kuruppanayakanpalayam, Bhavani, Gopi (A-1), Gajendiran (A-2) and Kalaiselvan (A-3) conspired to commit robbery of cash from V.K.V.Pathi working as Cashier in Obli Mills. In pursuant to the said conspiracy, at 4.45 am on 21.06.2008, when V.K.V.Pathi was passing through Kamaraj Nagar Road in his TVS 50 Motorcycle, A-1 identified V.K.V.Pathi to the other accused A-2 and A-3. In furtherance of the said conspiracy, on 30.06.2008 at about 4.45 am when V.K.V.Pathi was passing through the Kamaraj Nagar Road in his TVS 50 carrying cash and other documents with him. As schemed earlier, A-2 and A-3 sprinkled chilli powder on V.K.V.Pathi. They wrongfully restrained him. Slapped him on the face and pushed him down. Took away the TVS 50 Motorcycle and the bag containing Rs.20,000/-, Centurian Bank Demand Draft drawn for Rs.5,000/-. A Cheque book and few documents of the Mill. In continuation to the said crime A-1 to A-3 retaining the cash of

Rs.20,000/- threw the bag and other contents of the bag in the Bhavani river to destroy the evidence.

3.V.K.V.Pathi reported about the robbery to the police. The police went to the scene of crime, collected broken glass pieces, torn towel, pocket dairy and chilli powder packet under mahazar. On receipt of intelligence report, the Investigating Officer arrested A-1 to A-3 on 02.07.2008. Based on their confession statements, the TVS 50 of V.K.V.Pathi parked in the Cycle stand near Salem Corporation Old Bus stand was recovered. Further, based on the information given by the respective accused, search was conducted at the houses of the accused. From A-3 residence, cash Rs.3,000/- and a red colour torn towel was recovered under the mahazar. From A-2 residence, Rs.3,000/- was recovered under the mahazar. From A-1 residence, Rs.4000/- was recovered under the mahazar.

4.The shirt of V.K.V. Pathi, the towel pieces, and the packet were sent for chemical analysis. The report received from the lab indicated that the shirt of the defacto complainant V.K.V.Pathi, the torn towel pieces recovered from the Scene of crime and the residence of A-3 found presence of chilli powder.

5.The accused were tried for the following charges:

(i)A -1 to A-3, for offence under Sections 120 B and 201 IPC.

(ii)A-2 and A-3, for offences under sections 341, 394,392 and 328 IPC

(iii)A-1 for offences under sections 341,394,392, 328 r/w 34 IPC.

6.The prosecution to prove the above charges, examined 12 witnesses (P.Ws.1 to 12) 16 Exhibits (Exs.P.1 to 16) and 10 material objects (M.Os.1 to 10) were marked.

7.The trial Court found the accused guilty of charges. Sentenced and convicted them as below:

A-1 to A-3:

(i)For offences under section 120(B) IPC : 7 years Rigiuous Imprisonment;

(ii)For offence under section 341 IPC, Rs.200/- fine each and in default to undergo 2 weeks simple imprisonment;

(iii) For offence under section 394 IPC, 5 years Rigorous Imprisonment and fine of Rs.500/- each and in default to undergo 3 months rigorous imprisonment;

(iv) For offence under section 392 IPC, 7 years Rigorous imprisonment and fine of Rs.500/- each and in default to undergo 3 months rigorous imprisonment;

(v) For offence under section 201 IPC, 3 years Rigorous imprisonment and fine of Rs.500/- each, in default to undergo 3 months rigorous imprisonment.

A-2 and A-3:

For offence under section 328 IPC, 7 years rigorous imprisonment and fine of Rs.500/- each, in default to undergo 3 months rigorous imprisonment.

A-1 :

For offence under section 328 r/w 34 IPC, 7 years rigorous imprisonment and fine of Rs.500/-, in default 3 months rigorous imprisonment.

8. Aggrieved by the conviction and sentence, the present Criminal Appeal is filed.

9. The learned counsel for the appellants initially engaged to file the appeal failed to turn up when the appeal was listed for final hearing. Hence, the Tamil Nadu State Legal Services Authority was addressed to engage a counsel to defend the appellants. Accordingly, Mr. P. G. Perumal Pandian, learned counsel was appointed in this Criminal Appeal on behalf of the appellants.

10. The learned counsel for the appellants submitted that, the prosecution theory of robbery is highly imaginary one and stands unsupported by any reliable evidence. The truth of the complaint and the complainant itself is doubtful in this case. The complaint not given immediately after the occurrence. The independent witnesses to the occurrence turned hostile. The confession and the recovery based on the confession of the accused/appellants is highly doubtful. PW-1 is an interested witness. His deposition has very less evidentiary value.

11. The case of the prosecution is that, the accused while intercepting PW-1, kept their face covered. The identification of the accused by the victim

is therefore impossible. PW-1 who failed to account the money has come out with an imaginary complaint of robbery. That is the reason none of the independent witnesses supported the prosecution case.

12. Pointing the ambiguous manner the charges framed and the convictions given for the offences not made out even according to the prosecution witnesses, the learned counsel for the appellants would submit that the entire trial is bad. Hence, the conviction and sentence imposed on the accused/appellants is liable to be set aside.

13. Per contra, the Government Advocate (crl.side) appearing for the State would submit that, this is open and shut case where the identity of the accused spoken by PW-6, the conspiracy which hatched between A-1 to A-3 is disclosed by the accused persons in their confession statements. Incriminating materials were recovered based on the informations given by the accused persons. There was no delay in registering the FIR. The incident took place between 5.00 am and 5.30 am, on that day. The defacto complainant was attacked by sprinkling chilli powder. Since, the company money was robbed, P.W.1 has first informed his Proprietor and thereafter, has given the complaint. No delay in registering the FIR. Even otherwise, no prejudice is caused to the accused persons. The evidence of the victim PW-

1; The evidence of PW-6, the tea shop employee, who saw the accused indulging in conspiracy; the evidence of the chemical analyst, who has examined the shirt of the victim had opined the presence of chilli powder. Confession of the accused persons and recovery of incrimination. All put together the needle of suspicion points only the accused and none else. Therefore, sought for confirmation of the trial court judgment.

14.Regarding the charges framed and tried, the learned Government Advocate (crl.side) would contend that there this no error in the charges. Even otherwise, the accused persons have fully understood the charges and participated in the trial. They cannot at the appellate stage find fault with the formulation of the charges.

15.Heard the learned counsel for the appellants and the learned Government Advocate (crl.side) appearing for the State.

16.V.K.V.Pathi examined as PW-1 is the victim of the crime. He is the defacto complainant. On 30.06.2008, he left his house at about 4.45 am. First, a person tried to intercept him by sprinkling chilli powder on him. But, he avoided it and proceeded. Soon after other person stopped him. Threw chilli powder on him, slapped and pushed down. Meanwhile, the first person

has joined. The shirt of PW-1 was later collected and sent for chemical analysis. The report - Ex P-13 proves the presence of chilli powder in the shirt. PW-2 and PW-3 though were declared hostile by the prosecution, they both are residents near the scene of crime. They had deposed that a year before, when they came out from their houses at about 5.30 am, they saw crowd in the street and they heard somebody was robbed after being sprinkled with chilli powder. Therefore, the incident of robbery is corroborated through these witnesses. PW- 8 - the house owner of the premises where the accused were staying had deposed that she rented her house to A-1 on the recommendation of Moorthy and Jeganathan. PW-9 is the next door neighbour who though treated hostile by the prosecution has identified A-1 to A-3 as the persons residing in the next house. Thus, the proximity between the accused is established.

17.PW-6 is the star witness of the prosecution case. He is employed in the tea shop near Bhavani New Bus stand. He knew the accused persons. He saw the accused persons in his tea shop on 21.06.2008. He overheard them discussing about committing robbery. He saw all the three accused together again on 30.06.2008 at about 4.30 am. At about 5.30 am A-1 alone came. He was found very tensed. When PW-6 enquired A-1 about others, he told they have gone to Salem. The evidence of this witness stands un-impeached.

18.The two wheeler of PW-1 was recovered from a cycle stand near Salem bus stand on 02.07.2008 based on the information given by A-3. The TVS motorcycle marked as M.O. 2. The witness to the Mahazar Rajamanikam – The Village Administrative Officer (PW-4) has spoken about the recovery of TVS motorcycle and other recoveries.

19.In the light of the above overwhelming evidence against the accused persons, the trial court has held the accused persons guilty of all charges. The presence of A-1 to A-3 together on 21.06.2008 and 30.06.2008 at the tea shop is spoken by PW-6. He has spoken about the conversations between them. On the date of occurrence, at 4.30 am, all the three accused were seen together by him. By 5.30 am only A-1 had come back. In between that time, the robbery had taken place. The recovery of TVS motorcycle on the information of A-3, the proximity of the accused persons and the crime is well established and proved. In the said circumstances, this court finds that the judgment of the trial court deserves to be confirmed.

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20.In the result, the Criminal Appeal is dismissed thereby confirming the judgment of the trial Court dated 13.05.2010 in S.C.No.116 of 2009 on the file of the learned District and Sessions Judge (Fast Track Court No.4)

Bhavani, Erode District. The trial Court is directed to secure the presence of the accused/appellants to undergo the remaining period of sentence, if any.

20.03.2019

jbm

Index: Yes

Speaking order/non speaking order



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To

1. The District and Sessions Judge
(Fast Track Court No.4),
Bhavani, Erode District.

2. The Public Prosecutor,
High Court, Chennai.

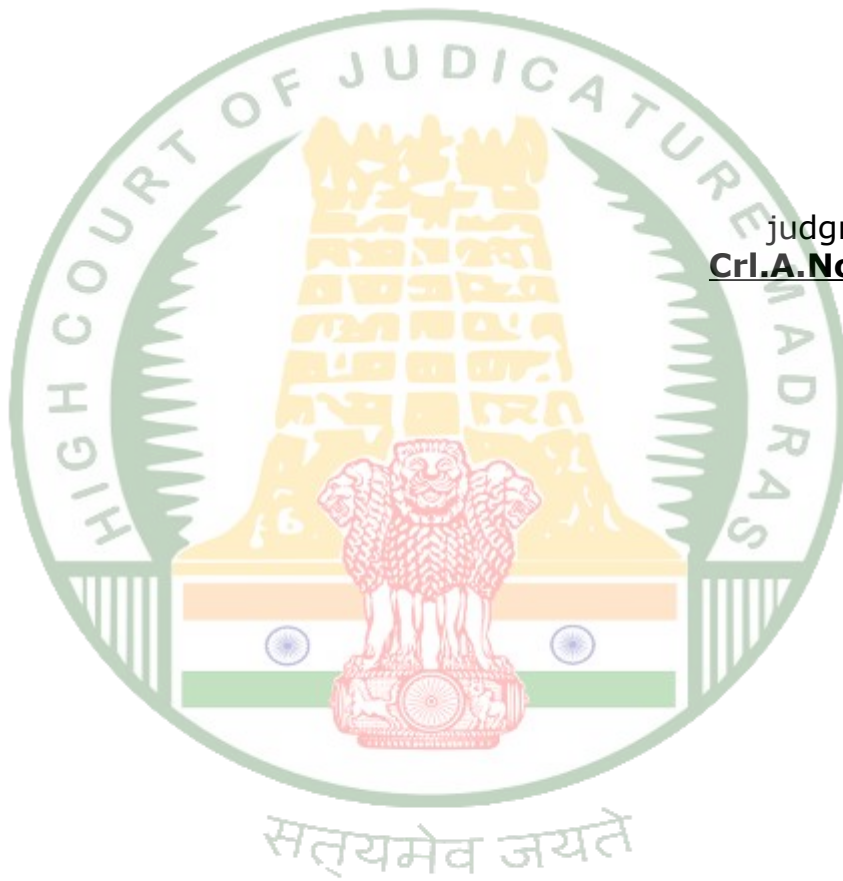
3. The Criminal Section,
High Court, Madras.



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G.JAYACHANDRAN.J.,

jbm



judgment made in
Crl.A.No.23 of 2011

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