

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2019

PRONOUNCED ON : 19.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.301 of 2011

1.Raja
2.Santhosh
3.Murali

... Appellants

Vs

State rep. By:
The Inspector of Police,
Meensuriti Police Station,
Ariyalur
(Crime No.40/2010)

... Respondent

Prayer:- This Criminal Appeal is filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur in S.C.No.153 of 2010 dated 29.04.2011 and acquit the appellants.

For Appellants : Mr.K.Thilageswaran

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

JUDGMENT

The appellants are before this Court challenging the conviction and sentence imposed by the learned Additional District and sessions Judge, Fast Track Court, Ariyalur in S.C.No.153 of 2010 vide judgment dated 29.04.2011.

2.The case of the prosecution is that, on 28.01.2010 at about 2.30 pm near A.G.R Thiruman Mahal Thennavanallur Village, on the Chennai Kumbakonam High road, when Thiru Kupusamy (P.W.1) was coming to Vadavarthalaipu in his Hero Honda motorcycle from North to South, the appellants herein came in a motorcycle and dashed Kupusamy with intention to rob him. Santhosh (A.2) placed a knife on the neck of Kupusamy and told him to give the money

or else, he will slice his neck. When Kupusamy refused to give money, Murali (A.3) attacked Kupusamy with his knife. Kupusamy evaded the attack. Murali (A.3) robbed Rs.1,000/- from the shirt pocket of Kupusamy. Santhosh (A.2) removed the wrist watch worth Rs.1,500/- from Kupusamy. By then, Raja (A.1) was waiting in the motorcycle. After robbing money and the wrist watch from Kupusamy, A.2 and A.3 escaped from the place along with A.1.

3.Immediately, thereafter, Kupusamy went to the police station and gave the complaint Ex.P.1 narrating the incident. The respondent Police took up the complaint and registered in Crime No.40/2010 for offence under Sections 341, 397 r/w 307 I.P.C. Based on the complaint, Thiru.P.Deivam, Inspector of Police, took up the investigation. He went to the place of occurrence and prepared an observation mahazar and recorded the statements of the witnesses.

4.On 30.01.2010, Raja (A.1) and Santhosh (A.2) were apprehended by the Police at about 4.30 pm. P.W.9 - Deivam, arrested Raja (A.1) and Santhosh (A.2) near Veeracholapuram bus stop. They both gave confession statements incriminating each other and involvement in the crime under investigation.

5.Based on the information given by them, in their confession statements, the wrist watch of the defacto complainant/Kupusamy was recovered from th custody of Santhosh (A.2). The weapon used for the crime was recovered near the bridge. Murali (A.3) was arrested on 03.02.2010 near Pappakudi bus stop. Based on the confession statement made by A.3, P.W.9 has recovered Rs.98,700/- from him which was a proceeds of the crime which includes Rs.1,100/- robbed from the defacto complainant - Kupusamy.

6.After completion of investigation, final report was filed against A.1 to A.3. Charges were framed for offence under Sections 341, 392 r/w 397 I.P.C., as against A.1; sections 341, 392 r/w 397 and 506(ii) I.P.C., as against A.2 and sections 341, 392 r/w 397 and 307 I.P.C., as against A.3.

7.The prosecution has examined 9 witnesses; marked 12 documents as Exs.P.1 to P.12 besides three material objects. No witness was examined and no document was exhibited on the side of the defence by the appellants/accused.

8.Relying upon the evidence of P.W.1 - Kupusamy (the victim), P.W.2-Shankar, Auto Driver and P.W.3 - Chandrasekar, viz, the passers and who have witnessed the occurrence and identified the accused, the trial Court has held that A.1 to

A.3/the appellants herein guilty of offence under Sections 341 & 392 r/w 397 I.P.C. As far as the other charges against A.2 and A.3, they were found not guilty.

9. Aggrieved by the said conviction and sentence, the present Criminal appeal is filed.

10. The learned counsel for the appellants would submit that the evidence of P.Ws.1, 2 & 3 who are supposed to be the eye witnesses to the occurrence, is very artificial, unbelievable. Without conducting Test Identification Parade, the witnesses were able to identify the accused persons during trial. The witnesses were not able to say about the specific overt act against each of the accused. All the three appellants were wrongly held guilty of offence under Sections 341 and 392 r/w 397 I.P.C., without proof.

11. The material objects which were marked as M.Os.1 and 2 were not forwarded to the Court immediately after seizure. The delay in forwarding the seized weapons (M.Os.1 and 2) render the prosecution case doubtful. The contradictions found in the prosecution evidence not been properly appreciated by the trial Court.

12. In response to the above contentions of the learned counsel for the appellants, the learned Government Advocate (crl.side) would submit that the robbery occurred in the day light, under the public view. P.W.2 - Auto Driver and P.W.3 are passerby and natural witnesses who have seen the occurrence. Evidence of these witnesses strongly corroborates the evidence of P.W.1 - the defacto complainant.

13. The contradiction between the evidence of P.W.1 and P.W.2 regarding the specific overt act attributed against A.1, the learned Government Advocate (crl.side) would submit that though P.W.2 has deposed that A.1 wielded knife to the defacto complainant, in fact, the case of the prosecution is that, A.1 was waiting in the motorcycle, A.2 and A.3 wielded knife and extorted cash and wrist watch from the defacto complainant. The victim - P.W.1 has rightly deposed. However, P.W.2 has erroneously referred the person who wielded the knife. This contradiction is not very vital to the prosecution since, the presence of the accused is spoken by these witnesses. All the three accused came in one motorcycle and dashed the defacto complainant thereby restraining him to go further. Thereafter, by wielding the knife under threat of murder, money and watch were extorted from P.W.1. Soon thereafter, all the three accused had fled away from the scene of occurrence. Since, all the three accused have participated in the crime, the trial Court has rightly convicted the accused/appellants.

14.P.W.1 to P.W.3 are the eye witnesses to the occurrence, while P.W. 1 is also victim of crime. The incident has took place in the broad day light, in the public view. The wrist watch robbed from P.W.1 has been later recovered based on the information given by A.2. The weapon used during the crime was also recovered based on the confessions and statements given by the accused. The victim P.W.1 has identified the weapon and also his wrist watch, the material objects, marked as M.O.1 to 3.

15.During the course of investigation, P.W.9, the Investigating Officer has come to know that Murali - A.3, an habitual offender had robbed nearly one lakh rupees. Based on confession and statement given by him, the same was recovered from his custody, under mahazar.

16.Though, P.W.4 one of the eye witness to the occurrence and P.W.6 witness to the seizure mahazar have turned hostile, in the light of the ocular evidence of P.Ws.1 to 3, prove the incident as put forth by the prosecution. The recovery of watch from the possession of the accused based on the confession statement lead to presumption of the guilty.

17.From the cumulative assessment of the oral evidence and the material objects seized from the possession of the accused, the prosecution has clinchingly proved that P.W.1 was restrained by A.1 to A.3. In order to rob they wielded knife and put P.W.1 under fear of death. They have extorted Rs.1,100/- and a wrist watch from P.W.1. The knife, the weapon used for the crime is identified by the eye witness as M.Os.1 and 2, the watch of the defacto complainant has been identified as M.O.3, by the defacto complainant- P.W.1. These material objects were recovered based on the confession statements of the accused persons.

18.The learned counsel for the appellant would submit that, in any event, the rigorous imprisonment for seven years for the offence under Section 392 r/w 397 I.P.C., is very harsh and excessive and therefore, he prayed for modification.

19.For the sake of convenience, Sections 392 and 397 I.P.C., are extracted below:-

392. Punishment for robbery - Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

.....

397. Robbery, or dacoity, with attempt to cause death or grievous hurt – If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

(Emphasis added)

20. In this case, the prosecution has proved that the crime has taken place on a highway. The weapons used are deadly in nature and the accused have threatened and attempted to cause death of P.W.1 when he refused to part away the money, in his possession. Therefore, when the statute prescribes minimum seven years for offence under Section 397 I.P.C., and no special reason available to reduce the sentence imposed on the appellants, there is no scope to reduce the minimum sentence prescribed under law.

21. In the said circumstances, the finding of the Court holding A.1 to A.3 guilty of offences under Sections 341, 392 r/w 397 I.P.C., is legally sustainable.

22. In the result, the criminal appeal is dismissed. The conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur in S.C.No.153 of 2010 dated 29.04.2011 are confirmed. The trial Court is directed to secure the presence of the accused/appellants to undergo the remaining period of sentence, if any.

सत्यमेव जयते Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court, Ariyalur.

2.The Inspector of Police,
Meensuriti Police Station,
Ariyalur.

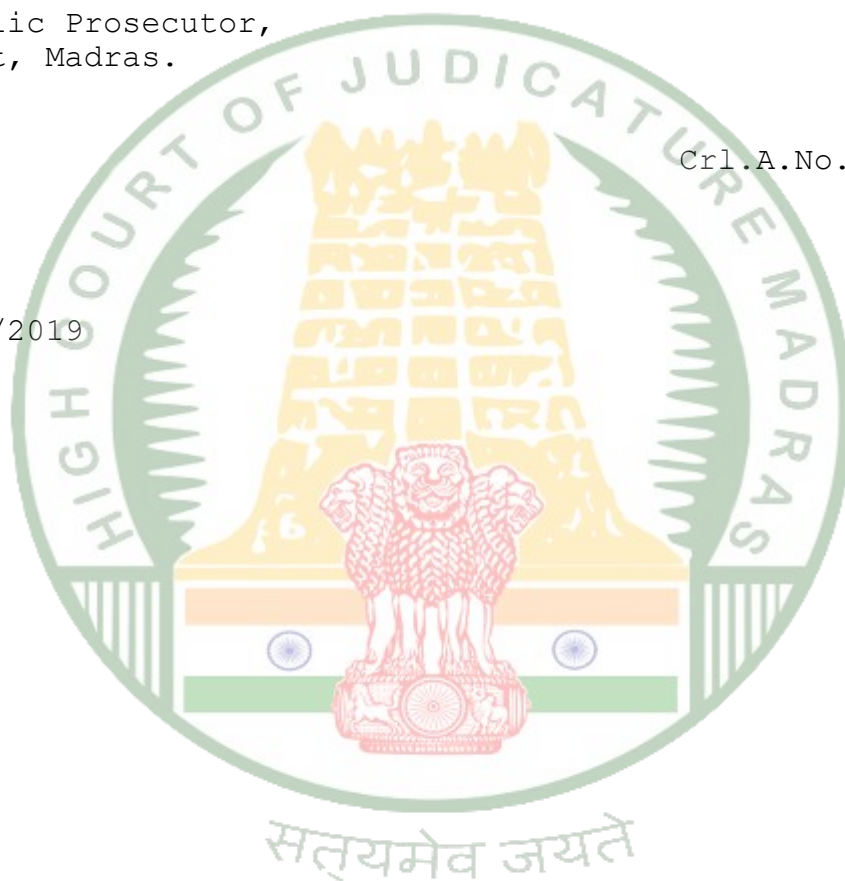
3.The Judicial Magistrate,
Jayamkondam.

4.The Chief Judicial Magistrate,
Perambalur.

5.The Public Prosecutor,
High Court, Madras.

Cr1.A.No.301 of 2011

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