

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.07.2019
C O R A M
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
Crl.A.No.571 of 2014

Kesavan ... Appellant/Accused
-Vs-
State rep. by
Inspector of Police,
D3, Ice House Police Station,
Chennai-600 005. ... Respondent/Complainant
(Crime No.343 of 2013)

Criminal Appeal filed under Section 374 of Cr.P.C, praying to set aside the judgment passed in S.C.No.379 of 2013 dated 10.09.2014 on the file of the IV Additional Sessions Court, Chennai.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.T.Shanmugarajeshwaran
Government Advocate (Crl.Side)

JUDGMENT

This Criminal appeal has been filed to set aside the judgment dated 10.09.2014 passed in S.C.No.379 of 2013 by the learned IV Additional Sessions Judge, Chennai.

2. The respondent police registered a case against the appellant in Crime No.343 of 2013 for the offence under Section 341, 294(b), 427, 397 and 506(ii) of IPC against the appellant and after completing the investigation, laid a charge sheet before the learned XIII Metropolitan Magistrate, Egmore, Chennai informing the commission of offence under Section 392 r/w 397 of IPC and the same was taken on file in PRC.No.126 of 2013. Since the offence is triable by the Court of Sessions, the learned XIII Metropolitan Magistrate committed the case to the learned Sessions Judge, Chennai. The learned Sessions Judge taken the file in S.C.No.379 of 2013 and made over the case to the learned IV Additional Sessions Judge, Chennai for disposal. After completing formalities, the learned IV Additional Sessions Judge framed charges against the appellant for the offence under Section 392 r/w 397 IPC.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 8 witnesses were examined and

marked 8 documents and one Material Object. After completing evidence, incriminating circumstances culled out from the prosecution witnesses was put before the accused, he denied as false. On the side of the defence, no oral and documentary evidence was produced. The learned Sessions Judge, after completing the trial and hearing the arguments advanced by both the counsel and also perused the oral and documentary evidence produced by the prosecution, found that the appellant was guilty for the offence under Section 392 r/w 397 of IPC and sentenced him to undergo 7 years Rigorous Imprisonment and fine of Rs.500/-, in default, 2 months Rigorous Imprisonment, by judgment dated 16.09.2014. There against, the present appeal has been preferred by the convict before this Court.

4. The learned counsel appearing for the appellant would submit that a false case has been foisted against the appellant and there are discrepancies in the evidence of the prosecution witnesses. PW-1 has stated that after drinking the cool drinks, the appellant/accused broken the bottles, which were kept in the shop. PW-2 has stated that the appellant/accused broken the cool drinks bottle. Therefore, there are contradictions in the evidence of the prosecution witnesses. Since PW-2 could not have been eye-witness, he was not present at the time of occurrence and his presence in the occurrence place was mentioned by PW-1. PW-2 has stated that he know the appellant/accused as well as PW-1, whereas, PW-1 has not mentioned the name of PW-2, who was also present at the time of the occurrence. Therefore, the prosecution has set up the witnesses for proving the case. Further, the place of occurrence is also not properly established by the prosecution. In this case, there is no injury and also the prosecution gathered broken bottles only, where it can be easily gathered at any private place. The amount of Rs.300/-, which was alleged to have taken from PW-1, was not recovered from the appellant. The accused was arrested only on the next day of the occurrence. Since he was involved in other cases, he was on bail and that time, the prosecution foisted the false case against him. Therefore, the prosecution has not proved its case beyond reasonable doubts, which warrants interference.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the prosecution has proved its case beyond reasonable doubts. PW-1 was running a betel nut shop and the accused was residing in the same area. The accused went to the shop of PW-1, drank cool drinks and also bought cigarette packet and he did not pay for the same. When PW-1 asked money, he refused to pay and took the cool drinks bottle, which was kept in the shop and broken the same and also taken away a sum of Rs.300/- from the pocket of PW-1. PW-2/eye-witness was present at the time of the occurrence and PW-3 is

the mahazar witness. PW-1 given a complaint before PW-7. After receiving the complaint, PW-7 registered a case in Crime No. 343 of 2013 for the offences under Sections 341, 294(b), 427, 397, 506(ii) of IPC and after completing the investigation laid the charge sheet. Though PW-4 turned hostile, he admitted the signature in the Observation mahazar-Ex.P4. The prosecution has proved its case beyond reasonable doubts and the confession statement was also recorded from the appellant/accused, which does not warrant any interference.

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

7. The case of the prosecution is that on 13.03.2013 at about 10.00.a.m the appellant/accused came to PW-1's shop at Door No73, Senthilathiban betel nut shop, Big Street, Triplicane and drank cool drinks and also purchased the cigarette packet. When PW-1 asked the money for the same, the appellant/accused scolded him with filthy language and took the bottles from the shop and broken it and threatened him with dire consequences and also taken a sum of Rs.300/- from the pocket of PW-1 and ran away from the place of occurrence. PW-2 is also one of the customer to the said shop and he was also present at the time of occurrence. PW-1 narrated the occurrence and he has also given the proper reason for the same. PW-4 is the witness to the observation mahazar and rough sketch and he has spoken about the investigation done by the Investigating Officer. PW-8 took further investigation from PW-7 and laid the charge sheet.

8. On reading of the evidence of PWs-1 and 2, it is seen that the appellant came to the shop of PW-1 and bought the cool drinks and also the cigarette and failed to pay the amount, when PW-1 asked him to pay the money, he refused to do so and scolded PW-1 and broken the bottles, which were kept in the shop and threatened PW-1 with dire consequences and also taken a sum of Rs.300/- from the pocket of PW-1 and ran away. The evidence of PW-2 corroborated the same. Therefore, the prosecution has proved its case beyond reasonable doubts. The appellant has involved in two other cases and also entered acquittal. The Trial Court has rightly appreciated the entire evidence and found that the appellant has committed the offence punishable under Section 392 r/w 397 of IPC. There is no merit in this appeal and the same is liable to be dismissed. However, considering the fact that the amount involved in this case and also the age of the appellant, this Court is inclined to modify the sentence imposed on the appellant.

9. In the result, this Criminal Appeal is allowed in part. The sentence imposed on the appellant/accused is reduced to 5 years Rigorous Imprisonment. Since the appellant/accused has already undergone the sentence, he is directed to be released forthwith, unless he is required in connection with any other case.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

KMI
TO

1. The IV Additional Sessions Judge,
The IV Additional Sessions Court,
Chennai.

2.The Principal Sessions Judge,
City Civil Court Chennai

3.The Superintendent
Central Prison, Puzhal, Chennai

4.The XIII Metropolitan Magistrate
Egmore,

5. The Inspector of Police,
D3, Ice House Police Station,
Chennai-600 005.

6. The Public Prosecutor,
High Court,
Chennai-104.

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