



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING ORDER  
02.09.2021

DATE OF PRONOUNCING ORDER  
27.10.2021

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.A.NO.206 OF 2015

Anilkumar Sharma

... Appellant

.Vs.

The State Represented by  
The Inspector of Police,  
Gurubarapalli Police Station.  
Crime No.296/2002

... Respondent

PRAYER:-

Criminal Appeal is filed under Section 374(ii) of Criminal Procedure Code, to call for the records in S.C.No.174 of 2008, dated 12.08.2010 on the file of the Additional Special Judge, Krishnagiri and set aside the conviction and sentence.

For Appellant : Mr.Dr.S.Manoharan

For Respondent : Mr.R.Vinoth Raja  
Government Advocate

J U D G M E N T

The matter is heard through "Video Conference".

2. Convicted second accused is the appellant herein.

3. The appellant was convicted for the offence under Section 397 of IPC and sentenced to undergo rigorous imprisonment for 7 years and also to pay a fine of Rs.300/- in default to undergo two months rigorous imprisonment. Thereafter, the appellant was convicted for the offence under Section 450 of IPC and sentenced to undergo rigorous imprisonment for two years and also to pay a fine of Rs.200/-, in default to undergo two months rigorous



imprisonment and further the appellant submits that he was convicted for the offence under Section 342 of IPC and sentenced to undergo rigorous imprisonment for six months in S.C.No.174 of 2008 on the file of the Additional Special Judge, Krishnagiri, judgment dated 12.08.2010.

4. The respondent-police filed a final report in crime No.250/2002 for the offence under Section 395 r/w 397, r/w 394, 342 of IPC and Section 27 of Arms Act. Initially, the final report was laid against A1 to A7. A6 and A7 died. Pending trial, the charges stands abated against A6 and A7. Thereafter, in view of the non bailable warrant pending against A3 to A5, the case against A3 to A5 was split up and renumbered as P.R.C.No.39/2008. Before the trial Court, A1/Irsad Ahamad @ Aslam and A2/Anil Kumar Sharma, were tried and the trial Court had convicted and sentenced them as stated supra and hence, the appeal by A2. Whether, A1 has filed appeal or not was not known.

5. The record reveals that the judgment passed by the Sessions Judge was delivered on 12.08.2010, after lapse of 5 1/2 years from the date of the judgment of the Sessions Judge, the appellant/accused no.2, appears to have moved the High Court and filed the appeal with the delay of 1510 days, the same appears to have been condoned. Since he was in custody.

6. The learned counsel for the appellant would contend that on the date of the occurrence, the accused/appellant was working in the Uttar Pradesh Road Transport Corporation and the Attendance Register was marked in another case, was marked before the lower Court, during the questioning under Section 313 (b) of Cr.P.C., the same was not considered.

7. The learned Government Advocate (Crl.side) for the respondent would contend that from the intimation received from the respondent-police, the accused has already underwent the sentence period and hence nothing survives. In reply thereto, the appellant counsel would contend that in the event of appeal being allowed and acquitted, he well get service benefit from the concern State Government.

8. The case of the prosecution as could be seen from the prosecution witnesses are as under:

i) The accused A1 to A7 are close associates and they are involved in High Way Petrol Bunk dacoity. On 11.06.2002 at about 1.35 am at I.B.P., Petrol Bunk near Gurubarapalli on the Krishnagiri to Hosur National High Ways, the accused 1 to 7 conjointly committed dacoity, A1, A2, A3 armed with "Kathi" and A6 armed with revolver while committing dacoity A1, A2, A3 and A6 criminally trespassed into the cabin of the I.B.P., Petrol



Bunk and threatened the witnesses Boopathi, Gundappan, Madheswaran, Noormohamed and Sankaran with dire consequence and locked them in the room and wrongfully confined them and voluntarily caused hurt while committing dacoity to witness Boopathi, Gundappan and Madheswaran with a stick the accused in the course of the same transaction conjointly committed dacoity of Rs.6,000/- which was kept in the Table Drawer the accused A4, A5, A6 were standing outside the petrol bunk and were watching and aiding A1, A2, A3 and A6 to committing the offence of dacoity and thereby A1 to A7 appear to committed an offence punishable under Section 395 of IPC and A1, A2, A3 and A6 committed an offence punishable under Section 450, 395 r/w 397 r/w 394 of IPC and 342 of IPC.

ii) Further, at the time and place and in the course of the same transaction, A6 used with the revolver in the commission of offence and threatened the witnesses Boopathi, Gundappan, Madheswaran and Sankaran and thereby, A6 committed an offence under Section 27 of Arms Act. The Inspector of Police, Krishnagiri Rural circle laid charge sheet against the accused.

9. Charges under Sections 450, 395 r/w 397, 394 and 342 of IPC were framed against the accused. The suggestive case of the defence during the cross examination is bare denial. However, the lower Court records reveals that when the appellant/accused A2 was questioned under Section 313 of Cr.P.C., he filed two documents to claim that during the alleged date of occurrence, he was working in the Uttar Pradesh State Transport Corporation that Attendance Register was marked in an another judicial proceedings before the Judicial Magistrate of Andra Pradesh and the certificate copy of that document was produced along with 313 questioning.

10. As stated supra, P.W.1 to P.W.4 who were worked in the Petrol Bunk and who are also identified the accused in the identification parade, were examined as P.W.1 to P.W.5. P.W.15/Dr.Shanmugam, who issued wound certificate under Exs.P7 to P9, respectively.

11. P.W.16/Sanjeevi Baskar, learned Judicial Magistrate, No.II, Dharmapuri has submitted Ex.P11/Identification parade report for A1. This Court is not concerned with the same, since this appeal is filed by A2. P.W.19/R.Ramasamy, Judicial Magistrate No.I, Dharmapuri, who had conducted identification parade in respect of appellant/A2, which is marked as Ex.P16. The investigation officer has marked Ex.P18/admission portion of the confession statement given by the appellant/accused to the Andhra Pradesh, Police Station, in connection with another dacoity case in Andhar Pradesh. While during the course of the said confession statement recorded by the Andhra Pradesh Police



Station, he has said to have also disclosed his involvement of this case and Ex.P20 is admissible portion in the confession statements. Further, MO1 and MO2 were also marked.

12. P.W.1 to P.W.5 are the employees of Petrol Bunk, where the alleged crime of dacoity was said to have been taken place. P.W.6 is the petty shop owner, who is owning shop near the I.B.P., Petrol Bunk and P.W.7 is the person who is running STD booth near the scene of the crime viz., I.B.P., Petrol Bunk. P.W.8 is owner of the mechanic shop near the Petrol Bunk. P.W.9 is the owner of the Petrol Bunk who could depose that on receipt of information, he went to the scene of the crime and sent the injured person to the hospital. On a close, scanning and scrutinising of the evidence of P.W.1 to P.W.5, who are occurrence witnesses to the action of the accused of armed dacoity.

13. It is the evidence of P.W.1 that the accused came in a Maruthi Car and these two accused along with two others with revolver Gun entered into the cabin of the I.B.P., Petrol Bunk, threatened him and other witnesses namely Sankaran, Boopathi, Gundappan and Madheswaran and the accused beat Boopathi, Gundappan and Madheswaran with stick and this is evident from Exs.P7 to P9/wound certificates, issued by P.W.15/Doctor.

14. The evidence of P.W.1 is that the accused tied all of them with pieces of cloth and wrongfully confined them in the room and looted Rs.6,000/-. This evidence of P.W.1 is corroborated by the evidence of P.W.s 2 to 5 the other eye witnesses. All the eye witnesses P.W.s 1 to 5 have categorically deposed that on 10.06.2002/11.06.2002 at 1.30 am these accused along with others came in a Maruthi Car and these two accused along with two others trespassed into the cabin of the I.B.P. Petrol bunk while one accused was seated inside the car. It is the further evidence of P.W.s 1 to 5 that these two accused along with two other who entered into the cabin were armed with deadly weapons knife and revolver and they threatened the witnesses with dire consequence. The evidence of P.W.s 1 to 5 are cogent and convincing and it clearly goes to prove that these two accused along with two others trespassed into the cabin of the I.B.P., Petrol Bunk.

15. It is further seen that the categorical evidence of P.W.1 to P.W.5 that these two accused along with two others armed with deadly weapons trespassed into the cabin of the I.B.P., Petrol bunk and the accused threatened him with dire consequence and locked and confined him in a room along with Boopathi/P.W.3 and P.W.3/Boopathi also corroborated the evidence of P.W.1 in this regard. The other eye witnesses P.W.s.2, 4, and 5 namely Sankaran, Gundappan and Madheswaran, have also



categorically deposed that these two accused along with the other two who entered into the cabin beat them with stick and they were all tied with pieces of cloth and they were confined in the room.

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16. All the five eye witnesses, as already stated earlier have clearly deposed that these two accused along with others entered into the cabin of the I.B.P., Petrol Bunk and the accused were in possession of deadly weapons and threatened the witnesses with dire consequence but P.Ws.3 to 5 are also tied all the eye witnesses with pieces of cloth and confined them to the room. The evidences of P.W.1 to P.W.5 are quiet convincing and acceptable and though there are minor discrepancies in their versions as stated earlier they are all insignificant and hence, the evidences of P.W.1 to P.W.5, in the considered opinion of this Court are reliable and trustworthy.

17. On a similar reasoning, the trial Court has held that the evidence of P.W.1 to P.W.9 goes to show that the charge under Section 450 and 342 of IPC are proved beyond reasonable doubt. After going through the evidence and answer elicited in the cross examination, I find that the evidence of P.W.2 to P.W.5, are clear and cogent and duly corroborate the evidence of P.W.1. From the clear evidence of P.W.1 to P.W.5, these accused appears to have come in a Maruthi Car and 4 of the accused trespassed into the cabin of the I.B.P., Petrol Bunk and threatened P.W.1 to P.W.5 with dire consequences with deadly weapons and tied them with pieces of cloth and looted Rs.6,000/- which were kept in denominations of Rs.500/-, Rs.100/-, Rs.50/- and tens. The car was subsequently seized and the seizure was produced under MO.1 and MO.2. Ex.P3 is seizure mahazar and Ex.P4 is the another seizure mahazar. The trial Court, based upon the evidence of the attesting witnesses have held that the recovery has been proved in the manner known to law.

18. In the absence of any deficiency in the procedure, coupled with the positive evidence of the prosecution, the seizure mahazars are held to be proved in the manner known to law. After going through the evidence of the prosecution coupled with documentary evidence, I find that the specific case against A1 and A2 are that they are members of the armed dacoity gang and committed dacoity on 11.06.2002 at 1.35 am at I.B.P., Petrol Bunk near Gurubaraplli on the Krishnagiri to Hosur National Highways. Both A1 and A2 along with five others (altogether seven accused) armed with deadly weapons trespassed into the I.B.P., Petrol Bunk and threatened the witnesses with dire consequences and locked them in the room and wrongfully confined them and voluntarily caused hurt to witnesses Boopathi, Gundappan and Madheswaran and conjointly committed dacoity of Rs.6,000/- which was kept in the table drawer.



19. From the evidence of the injured witnesses P.W.2, P.W.3 to P.W.5 and the evidences of the other eye witness P.W.1 and from Ex.P2 observation mahazar and from Ex.P3 seizure mahazar for seizure of cloth bits which was used by the accused to tie the witnesses while committing the act of dacoity has been proved in the manner known to law and thus, the trial Court has rightly come to the conclusion that the prosecution has proved the charges beyond reasonable doubt.

20. The learned counsel for the appellant has raised that the plea of alibi raised during questioning under Section 313 of Cr.P.C., was not dealt with properly by the Sessions Judge.

21. This Court has given its anxious consideration for the said plea. In order to appreciate the same, it has become incumbent to see the evidence of investigation officer.

22. P.W.19/Ramasamy the then learned Judicial Magistrate No.I, Dharmapuri deposed that he conducted the identification parade for Anilkumar Sharma A2 as per the orders of the learned Chief Judicial Magistrate, Krishnagiri. The learned Judicial Magistrate No.I, Dharmapuri further deposed that he conducted the identification parade at Central Prison, Salem on 20.05.2003 and which has been marked as Ex.P16.

23. P.W.21/Noorullakhan, who was the then Inspector of Police Hudco Police Station took up the case for further investigation and on coming to know that Irsad Ahamad @ Aslam A1 was in Judicial custody at Chittoor prison in connection with some other case went there on 28.03.2003 and produced before the other case went there on 28.03.2003 and produced before the learned Judicial Magistrate No.II, Hosur and as per the orders of the learned Magistrate took him into police custody on 30.03.2003 and recorded the confession statement given by him. The admissible portion of the confession given by Irsad Ahamad @ Aslam A1 is marked as Ex.P.17.

24. This appeal is by at the instance of Anilkumar Sharma/A2. The evidence of P.W.24/Arjunan that the said Vikram sikh took up the case for investigation and examined one Srinivasan who translated the confession given by the Irsad Ahamad @ Aslam A1, and Anilkumar Sharma A2 and recorded the statement of Srinivasan and further deposed that he gave a requisition to the learned Judicial Magistrate at Ananthapoor District, Andra Pradesh through Ex.P.21 requesting him to issue orders to the Superintendent of District Jail, Reddipalli Village, Ananathpoo District to produce both the accused in connection with Gurubarapalli Police Station in Crime No.250/2007. The Inspector further deposed that the said Vikram Singh examined witnesses Prasath, Salman and Inspector



Narasimman and recorded their statements on 28.08.2003.

25. Thus, these two accused, the appellant more specifically was languishing in jail for the offence committed in the State of Andhra Pradesh and on the discreet information given and received by the police, the Police from Tamilnadu had reached Ananathapoor District, Andhra Pradesh and made requisition and subsequently produced both the accused in connection with the present crime number. Thereafter, Identification parade has been conducted. Though, the learned counsel for the appellant/accused would contend that there is a delay in conducting identification parade. The lower Court records connected the jail records produced from Andhra Pradesh wherein, originally, the appellant was arrested and remanded to Judicial Magistrate in connection with the dacoity case in Andhra Pradesh. The offence alleged to have been taken place on 10.06.2002/11.06.2002 at 1.30 pm, identification parade was conducted by the Judicial Magistrate at Central Prison, Salem on 11.04.2003.

26. A specific question was put to P.W.1 to P.W.4 regarding the identification. From the cross examination, I find that P.W.1 to P.W.4 have categorically stated that they were wrongfully confined inside the glass cabin for 30 minutes and they could able to see the accused and they remembered the face of the accused. The explanation offered by the witnesses in this regard as extracted supra is convincing and in view of the categorical evidence of the Judicial Magistrate/P.W.16, that the prosecution witnesses have clearly identified the accused during the identification parade and hence, I find that the delay in conducting the identification parade was duly explained by the prosecution. The accused have been originally arrested and they were in custody before the Andhra Pradesh Jail, subsequently, produced after following the procedures therefore. Thereafter, Identification parade have been conducted.

27. At the risk of repetition, P.W.19/Judicial Magistrate who had conducted Identification parade for appellant/A2, had categorically stated all the four witnesses have clearly identified the accused during identification parade and also they have identified both the accused in the Court during the time of trial as observed by the Sessions Judge, as recorded in the evidence. Now, the sole point that is to be considered is whether, the document produced by A2 during the questioning under Section 313 of Cr.P.C., has been dealt with properly.

28. In support of the stand, he produced the records namely Attendance Register marked in C.C.No.101/2003 and also produced the deposition of the accountant of State Transport Corporation in C.C.No.101/2003, this is with regard to plea of alibi that is



raised in the questioning under Section 313 of Cr.P.C.

29. It remains to be stated that no such plea has been taken during the cross examination of the eye witnesses P.W.1 to P.W.5 nor even with the various investigation officers. The document was not produced through the competent person who could say about the genuineness of the document. The document was not produced in the manner known to law viz., no petition is filed under Section 91 of Cr.P.C., also assumes significance. Whether, the Attendance Register is true and genuine. Whether, the person who signed the Attendance Register is that of the accused or somebody has impersonated the accused for marking the Attendance Register is also not known.

30. In other words, A2 has produced these records. However, he has not produced the same by letting in oral evidence or summoning any person who is connected with those documents to speak about the genuinity or reliability that can be placed upon those documents. He has not taken any steps to summon any witness in connection with the records filed by him and nor even filed any application under Section 91 of Cr.P.C., to call for the records in the manner known to law. Had he followed such procedures, he could have offered an opportunity for the prosecution to cross examine the witnesses in connection with those documents especially it is the plea of alibi and hence, the trial Court has rightly rejected the plea of alibi that was raised in questioning under Section 313 of Cr.P.C., stage.

31. Hence, I do not find any error in rejecting the plea for the different reasoning as stated supra and hence, I find that all the points raised by the appellant stood negatived and the charges are proved beyond reasonable doubt by the prosecution. Similar finding arrived by the trial Court cannot be found fault. After hearing both the parties on the question of sentence, I find that the sentence awarded by the learned Sessions Judge is in consummated with the proved charges and hence, the conviction and sentence passed by the trial Court is hereby confirmed and this Court finds that the appeal is devoid of merits and liable to be dismissed.

32. Accordingly, the criminal appeal stands dismissed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Additional Special Judge,  
Krishnagiri.
2. The Judicial Magistrate No.II,  
Dharmapuri.
3. The Superintendent of Police,  
Central Prison,  
Salem.
4. The Inspector of Police,  
Gurubarapalli Police Station.
5. The Public Prosecutor,  
High Court of Madras.

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