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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

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THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.433 of 2019
and Crl.MP.4821 of 2020

Mani (now confined at Central Prison, Vellore)
...Appellant/ Accused No.4

Vs.

State Rep by The Inspector of Police,
M2 Port Marine Police Station,
Chennai (Cr.No.1 of 2004)

....Respondents/Complainant

PRAYER : Criminal Appeal is filed under Sections 374 of Criminal Procedure Code to call for the records relating to the judgment of the Additional District and Sessions Court (FTC - III), Chennai made in SC.No.145 of 2007 dated 19.06.2007 and set aside the same.

For Appellant : Mr.S.N.Arunkumar.

For respondent : Mr.E.Raj Thilak, APP.

J U D G M E N T

This appeal has been filed against the judgment of conviction and sentence passed by the learned Additional District and Sessions Court (FTC-III), Chennai made in SC.No.145 of 2007 dated 19.06.2007.

2. The brief facts of the prosecution is as follows :-

The case of the prosecution is that on 26.05.2004 at about 12.05noon time a ship by name Ruhu Nupra was anchored at about 3-1/2 miles away from the Chennai Port and at that time the accused had reached there by using a fishing boat and the accused 1, 2, 4 and 5 have attempted to commit robbery by using deadly weapons by way of boarding into the said ship through the rope and due to the intervention of PW1 and his men who belong to Coast Guard their attempt was foiled and they were



apprehended in the same spot and thereafter, PW1 had given a compliant to the respondent/police based on which a case was registered in Cr.No.1 of 2004. The complaint alleged to be given by PW1 had been marked as Ex.P1. On receipt of the complaint/Ex.P1, the Investigating Officer had conducted investigation, examined connected witnesses and after completing the investigation, laid a final report on the file of the XVI Metropolitan Magistrate, George Town, Chennai for the offences under Section 395 r/w.398 IPC and under Sections 395 r/w.398 r/w.511 IPC. The case was taken up in PRC.No.103 of 2004. Before committal, A6 in the case passed away and the charges against A6 got abated. The learned Magistrate finding that the case was triable by the Court of Sessions had committed the case to the Principal Sessions Court and the same had been taken up in SC.No.145 of 2007 and thereafter made over to the trial Court.

3. On the side of the prosecution, PW1 to PW7 were examined and Exs.P1 to P11 were marked and M.Os.1 to 4 were also marked.

4. After completion of trial the accused were questioning under Section 313 Cr.PC, the accused denied the charges. However, no evidence were let in on the side of the defence. The trial Court after hearing the arguments of both sides and upon analysing the relevant records and materials found the accused 1 to 5 guilty under Sections 395 r/w.398 IPC and sentenced them to undergo 7years rigorous imprisonment. As against the conviction and sentence passed by the trial Court, the present appeal has been filed by the appellant/A4.

5. Assailing the judgment of conviction and sentence, Mr.S.N.Arun Kumar, the learned counsel for the appellant/A4 would submit that in the complaint given by PW1 which has been marked as Ex.P1, PW1 has clearly stated that out of six accused four accused have already boarded into the ship, whereas the evidence in the Court was totally contrary to the complaint. Though, PW1 has stated that recoveries have been made from the accused, no specific evidence have been let in by the prosecution to prove that the recovery of weapon has been made from the appellant herein. The trial Court without taking into consideration the serious lacuna and infirmities in the prosecution case has erred in convicting the appellant.

6. The learned counsel would further submit that the co-accused in this case (A1 to A3 and A5) who were similarly placed and evidence against whom were similar in nature, preferred



separate Appeal in Crl.A.No.547 of 2007 before this Court and this Court taking into consideration the infirmities in the evidence and also finding that the prosecution has not proved its case beyond all reasonable doubt had allowed the appeal and acquitted the co-accused (A1 to A3 and A5). He would further submit that the trial Court without there being any independent witnesses, based on the alleged confessions made to the police and the evidence of the official witnesses had wrongly convicted the appellant.

7. Per contra, the learned Additional Public Prosecutor would submit that it is a case where the appellant along with other accused had attempted to board into a vessel which was anchored 3-1/2 miles away from the harbour to commit dacoity. PW1 who is the Assistant Commandant of Coast Guard had given a complaint through whom Ex.P1 has been marked and PW2 who accompanied PW1 at the time of occurrence had corroborated the evidence and both of them have clearly spoken about the overt act against all the accused and the trial Court after considering the evidence and materials on record have rightly convicted the accused for the offences under Sections 395 r/w.398 IPC and thereby the conviction and sentence passed by the trial Court does not need any interference.

8. Heard the counsel and perused the materials available on record.

9. The specific case of the prosecution is that out of the six accused, four accused have boarded into the ship for the purpose of committing dacoity. It is the case of PW1 that he had gone to the place of occurrence, on being intimated by the sailors in the merchant vessel Ruhu Nupra that some pirates had attempted to commit robbery. Strangely in this case, none of the persons who are stated to have given intimation to PW1 have been examined in this case. The I.O./PW7 has also admitted to about not examining any other independent witness. It is relevant to extract the admission of PW7/IO who has stated that "நான் எந்த சாட்சிகளையும் விசாரித்து அவர்களின் வாக்குமூலங்களை பதிவு செய்யவில்லை என்றால் சரிதான்".

10. Further, in respect of the co-accused who have been similarly placed they have filed Crl.A.No.547 of 2007 before this Court, this Court by judgment dated 30.11.2015 had allowed the appeal and acquitted the accused. The relevant portion of the judgment in Crl.A.No.547 of 2007 is extracted hereunder :-



"11. The specific case put forth on the side of the prosecution is that out of six accused, four accused have boarded into the ship in question for committing dacoity.

12. At this juncture, the court has to look into the allegations made in the complaint. The complaint in question has been marked as Ex.P.1, wherein it has been clearly stated that four accused out of six accused have already boarded into the ship in question. The author of Ex.P.1 has been examined as P.W.1. During the course of chief examination, he would say that four accused have tried to board into the ship in question by using its cable, but during the cross-examination he would say that he did not say anything that four accused have already boarded into the ship in question. The specific case of the prosecution is that four accused have already boarded into the ship, but the evidence of P.W.1 is totally inverse. Further, P.W.1 during the course of cross-examination has disowned the allegation made in Ex.P.1. Therefore, on the basis of rickety type evidence given by P.W.1, the Court cannot come to a conclusion that four accused out of six accused have already boarded into the ship or attempted to scale.

13. It is not an exaggeration to say that on the side of the prosecution, trustworthy evidence is not available for the purpose of proving the offence alleged to have been committed by all the accused. Further, as rightly pointed out on the side of the appellants/accused 1 to 3 and 5, no recovery has been made and further for the purpose of knowing the juxtaposition of the ship in question, no rough sketch is available on the side of the prosecution. Therefore, viewing from any angle, the contentions put forth on the side of the prosecution cannot be accepted.

14. The trial court, without considering the vital infirmities found on the side of the prosecution and also without looking into the nebulous evidence adduced by P.W.1, has erroneously invited conviction and sentence against the appellants/accused 1 to 3 and 5. In view of the discussions made earlier, this Court has found acceptable and considerable force in the contentions put forth on the side of appellants/accused 1 to 3 and 5 and altogether the present Criminal Appeal deserves to be allowed."

11. In the opinion of this Court, the case of the prosecution has not been proved beyond all reasonable doubt and the trial Court has erred in convicting the appellant without any legal evidence available on record.



12. In fine, the Criminal Appeal is allowed. The conviction and sentence passed against the appellant/accused in SC.No.145 of 2007 by the trial Court is set aside. The appellant/accused is acquitted. Bail bond, if any executed by him shall stand cancelled. It is stated by the learned counsel for the appellant that the appellant is still in custody. The appellant is entitled to be set at liberty, if his custody is not required in any other case. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-VI)

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Sub-Assistant Registrar

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To

1. The Additional District and Sessions Court (FTC-III), Chennai.
2. The XVI Metropolitan Magistrate, George Town, Chennai
3. The Chief Metropolitan Magistrate, Egmore, Chennai (for information)
4. The Superintendent, Central Prison, Vellore.
5. The Inspector of Police, M2 Port Marine Police Station, Chennai.
6. The Public Prosecutor
High Court, Madras 104.
7. The Section Officer
Criminal Section
High Court, Madras 104.

Crl.A.No.433 of 2019.

GPL(CO)
SP(17/12/2021)