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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.03.2022  
Pronounced on : 30.03.2022

C O R A M

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.621 of 2019

Sugumaran @ Sagu

... Appellant / Sole Accused

-vs-

The State Rep. By  
Inspector of Police,  
Crime, N-1, Royapuram Police Station,  
Chennai - 600 013.  
(Crime No.568 of 2011)

... Respondent / Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned XVIII Additional Sessions Judge, City Civil Court, Chennai dated 07.01.2019 in S.C.No.122 of 2012.

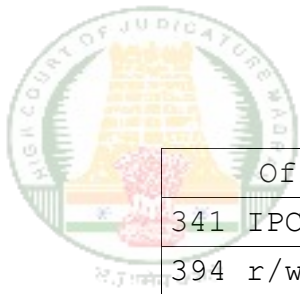
For Appellant : Mr.T.R.Sivaram  
for Mr.C.V.Kumar

For Respondent : Mr.Leonard Arul Joseph Selvam  
Government Advocate (Crl.Side)

J U D G M E N T

The present criminal appeal has been filed by the appellant to set aside the judgment of conviction and sentence passed by the learned XVIII Additional Sessions Judge, City Civil Court, Chennai, dated 07.01.2019, in S.C.No.122 of 2012.

2. The appellant herein is the sole accused in the above referred sessions case. He stood charged for the offence under Sections 341 and 394 r/w 397 IPC. By judgment dated 07.01.2019, the learned XVIII Additional Sessions Judge, City Civil Court, Chennai, came to the conclusion that the appellant is found guilty under Sections 341 and 394 r/w 397 IPC, convicted and sentenced as follows:



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| Offence         | Sentence                                                                                                                                    |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 341 IPC         | To pay a fine of Rs.500/-                                                                                                                   |
| 394 r/w 397 IPC | To undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months. |

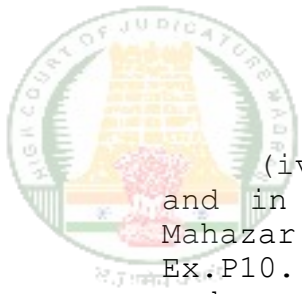
Challenging the said conviction and sentence, the accused is before this Court, by way of filing this Criminal Appeal.

3.The case of the prosecution is as follows:

(i) PW1-Balamurugan, is running a grocery shop near to the Stanley Hospital. On 30.04.2011, around 9.00pm, when at the time, he returned to his home, near the staircase leading to Meenakshiamman Pettai, the accused/appellant herein waylaid and pulled his hand and when he tried to push him aside, the accused snatched two sovereign gold chain from his neck. When at the time, the accused attempted to snatch the chain, PW1 made alarm and at that time, the accused attacked PW1 with knife, thereby, PW1 sustained injury near to his left ear. During such time, the accused stole away his mobile phone also. Afterwards, the passers by viz., one Muthukumar and his daughter, admitted PW1 in the Stanley Hospital.

(ii) In the hospital, PW8-Dr.Muthunarayanan, examined PW1 and found a cut injury measuring 10x4x4cm at the back of the head, near the left ear. In this regard, he issued an Accident Register copy under Ex.P6. In turn, after completing treatment, PW9-Dr.Babu Antony, the doctor, attached with the same hospital, discharged PW1 and issued a Wound Certificate under Ex.P7, stating that the injury sustained by PW1 is simple in nature. In the meantime, after admitting PW1 as inpatient, PW8 informed the occurrence to the investigating officer-PW10, for further course of action.

(iii) PW10-Martin Robert, the then Inspector of Police, Royapuram Crime Branch, on receipt of the information from the hospital on 30.04.2011 around 22.00hours visited the hospital, wherein he examined the PW1 and received the complaint. After receipt of the complaint he returned to the police station and registered a case in Cr.No.568 of 2011 for offence under Sections 341, 394 r/w 397 of IPC. The complaint given by PW1 was marked as Ex.P1 and the printed FIR was marked as Ex.P8. After registering the case, PW10 again returned to the hospital and in the presence of witnesses, he recovered the blood stained cement colour pant and light brown colour inner-wear(\$1;o) from PW1, under the cover of Mahazar [Ex.P3]. He examined the witnesses and recorded their statements.



(iv) On the next day, PW10, visited the scene of occurrence and in the presence of witnesses, he prepared an observation Mahazar under Ex.P9. He had drawn the rough sketch under Ex.P10. On 04.05.2011, he examined the Doctor, who treated PW1 and received the wound certificate. Later on 25.05.2011 around 8.00am, on information, near to M.S. Temple, he arrested the accused. On interrogation, in the presence of one Raja, Jayakumar and Kamesh, he recorded the confession statement from the accused. In the confession statement, the accused admitted the commission of offence and willing to identify the weapon, which was used for the commission of offence. Further, at the same time, he has produced the gold chain and the same was recovered in the presence of PW6-Jayaraman and one Nagaraj, under the cover of Mahazar Ex.P4. Admitted portion of the confession statement given by the accused was marked as Ex.P11. After recovering the stolen property, he made an arrangement for sending the accused to the remand. Accordingly, after completing the investigation, he came to the conclusion that the accused herein is liable to be convicted for offence under Sections 341 and 394 r/w 397 of IPC and filed a final report.

4. Based on the above materials, the trial Court framed charges under Sections 341 and 394 r/w 397 of IPC and the accused denied the same as false. Hence, the accused was put on trial. In order to prove their case, on the side of prosecution, 10 witnesses have been examined as PW1 to PW10 and 11 documents were marked as Ex.P1 to Ex.P11, besides three material objects [MO1 to MO3].

(i) Out of the said witnesses, PW1-Balamurugan, is the victim in the alleged occurrence. He had spoken about the occurrence as during the relevant point of time, the accused after waylaid him, snatched 2 sovereign of gold chain and afterwards, while at the time, he raised alarm, the accused attacked him with the knife and caused injury.

(ii) PW2-Muthukumar, is the resident of same locality. He has spoken about the occurrence as on hearing the news that somebody attacked PW1, he and his daughter went there and admitted the PW1 in the hospital.

(iii) PW3-Devendran, is the witness, attested in the observation mahazar. He did not give evidence in support of the prosecution. Hence, he was treated as a hostile witnesses.

(iv) PW4-Murugasamy, is also a resident of Tondiarpet, gave evidence as on 30.04.2011 around 10.15am, the police attached with Royapuram came to the Stanley Hospital, wherein, PW1 is admitted as an inpatient and recovered blood stained pant and inner-wear (\$1;o) under the cover of mahazar.



(v) PW5-Selvam, is the eyewitness to the occurrence. He has spoken about the occurrence as during the relevant point of time, one unknown person waylaid a person, who is travelling in a cycle and after attacking him near to the left ear, stole away the mobile phone from him. He identified the accused as he alone committed the said offence.

(vi) PW6-Jayaraman, is the witness for the recovery of stolen property, he spoke about the occurrence as during the relevant point of time on 26.05.2011, during interrogation, the accused gave a statement before the police and later produced one dollar chain, cell phone and Rs.300/- and the same has been recovered by the police under the cover of mahazar Ex.P8.

(vii) PW7-Sowndarrajan, working as Junior Engineer in Corporation, gave evidence as on 30.04.2011 in M.S.Kovil Street, there was no power cut. In this regard, he issued a certificate under Ex.P5.

(viii) PW8-Dr.Muthu Narayanan and PW9-Dr.Babu Antony, are the doctors, who gave evidence in respect to the injuries sustained by PW1 and about the issuance of the certificates.

(ix) PW10-Mortin Robert, is the police officer, had spoken about the receipt of complaint, registration of the case and about the filing of final report.

5.When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, none were examined on his side as a defence witness and no documents were marked.

6.Having considered all the above, the trial Court convicted and sentenced the accused as stated in paragraph No.2 of this judgment. Aggrieved over the said conviction and sentence, the appellant is before this Court, with this Appeal.

7. I have heard Mr.T.R.Sivaram, learned counsel appearing for the appellant and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl.Side), appearing for the State and also perused the records carefully.

8.The first and foremost contention of the learned counsel appearing for the appellant is that the evidence given by the prosecution witnesses would go to show that, after securing the accused, the respondent police has not conducted any identification parade. Even the accused has not been identified by the PW1 and PW5 in the police station. Further, prior to the occurrence, PW1 did not know the accused. Therefore, in the



9. Now, on considering the said submissions with the relevant records, here it is a case, admittedly after securing the accused, the investigating agency did not conduct any identification parade. On the other hand, in respect to the identity, when at the time the defacto complainant was examined as PW1, identified the accused as he only waylaid him and snatched his gold chain. Further, he gave evidence in his cross examination as while at the time of snatching the chain, he saw the accused accurately. In the said situation, though the alleged occurrence has happened in the night hours, in respect to the presence of light, PW7, Junior Engineer, Royapuram Corporation, gave evidence as in the occurrence place, there was light in the whole locality. Therefore, the evidence given by PW1 and the evidence given by PW7 would go to show that there was light in the occurrence place. The said evidence was corroborated through the evidence of PW5, who has stated before the trial Court as the present accused alone after attacking PW1, snatched the gold chain. In otherwise, admittedly, no identification parade was conducted in the present case. In this regard, a Division Bench of this Court while at the time of disposing CrI.A.Nos.1863 of 2002 & 1816 of 2003 dated 16.12.2004, held as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



cannot be discarded on the ground that there was no test identification parade earlier.'

10. Now, by applying the said principles with the case in hand, though the evidence given by PW1 and PW5 is not a primary evidence, just because of the same, this Court cannot drop out the entire case as the prosecution failed in their attempt to prove their case. Accordingly, the first submission made by the learned counsel appearing for the appellant is not having any much force to assail the case of the prosecution.

11. Secondly, the learned counsel appearing for the appellant would contend that the evidence given by the prosecution witnesses in respect to the arrest and recovery is having lot of contradictions. In respect to material objects recovered from the accused, the evidence given by PW6 is entirely contradictory with the evidence given by the investigation officer. Therefore, without proving the recovery, it cannot be held that the appellant alone committed the offence as alleged by the prosecution.

12. In this regard, the learned Government Advocate appearing for the respondent police made submission that the minor contradiction arisen in the evidence given by the prosecution witnesses cannot be taken into account for deciding the appeal.

13. Now, on considering the said submissions with the relevant records, in respect to arrest and recovery, PW10, who arrested the accused and recovered the case properties gave evidence before the trial Court as on 25.05.2011, around 8.00am, the accused was arrested in M.S.Koil Corner and thereafter, on interrogation, he gave a confession statement and the same has been recorded in the presence of Raja, Jayakumar and one Kamesh. He gave further evidence that in the confession statement given by him, the accused was willing to identify the knife, which was thrown away, on the way to his house. Further, during such time, he produced the stolen property, in the presence of one Jayaraman and one Nagaraj.

14. On close scrutiny of said evidence given by PW10, according to him, immediately after giving confession, the accused produced the stolen property. But the confession statement is recorded in the presence of Raja, Jayakumar and Kamesh. Being the reason that both documents prepared in the presence of different witnesses, it would create a doubt whether PW1 arrested the accused and recorded the confession statement as stated by him. Before the trial Court, in order to corroborate the evidence given by PW10, in respect to arrest and recovery, one Jayaraman, who is the person present during the



time of recording the confession statement was examined as PW6. In his evidence he has stated that in his presence, the accused gave confession statement and thereafter, the accused brought the investigation team to one hut in 'H' block, which was situated in Cement Road and produced the stolen property, one mobile phone and Rs.300/- and the same have been recovered under the cover of Mahazar, wherein he signed.

15. Now, on going through the said evidence, in respect to the recovery of stolen properties, the evidence given by PW6 and PW10, are having a lot of contradictions. More than that, the weapon which was used at the time of occurrence has also not been recovered. Before the trial Court, only the stolen property was marked as M.O.1 and on the other hand, the cellphone and Rs.300/- which were recovered from the accused have not been marked as material objects. The prosecution has not explained as to why those properties were not marked and produced before the Court. Therefore, it is not safe to rely upon the evidence given by PW10 in respect to arrest and recovery. Hence, I am of the considered view that the prosecution has not proved the matter of arrest and recovery and accordingly, this Court cannot hold that the accused committed the robbery as alleged by the prosecution.

16. In the above said circumstances, the evidence given by PW1 to PW3 in respect to the identification of the accused coupled with the evidence given by PW6 and PW10, in respect to the arrest and recovery, would create a doubt whether the story put forth by the prosecution is found to be correct or not. The contradiction arisen as observed above would also create a doubt over the case of the prosecution.

17. Therefore, in the light of the above discussion, this Court is of the considered opinion that the prosecution has not proved the guilt of accused beyond reasonable doubt. Accordingly, the appeal is allowed. The conviction and sentence imposed upon the appellant/accused, by the learned XVIII Additional Sessions Judge, City Civil Court, Chennai, in S.C.No.122 of 2012 dated 07.01.2019, is set aside. The accused is acquitted of the charges. Bail bond executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar



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1. The XVIII Additional Sessions Judge,  
City Civil Court,  
Chennai,
2. The Public Prosecutor,  
High Court, Madras.
3. The Inspector of Police,  
Crime, N-1, Royapuram Police Station,  
Chennai - 600 013.
4. The Superintendent of Prison,  
Central Prison, Puzhal, Chennai.

Criminal Appeal No.621 of 2019

RSV[co]  
NSK 30/03/2022