



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.02.2023

CORAM

THE HONOURABLE Mr.JUSTICE **D.BHARATHA CHAKRAVARTHY**

Crl.A.No.128 of 2015

T.Arul Sundari

..... Appellant

Vs.

State rep by

1.The Inspector of Police

CBCID

Metro Wing

Chennai-2

2.Madan Singhvi

3.Thachinamoorthy

.... Respondents

Prayer: Criminal Appeal filed under Section 372 of Criminal Procedure Code, to set aside the judgment passed against the appellant on 17.11.2014 in C.C.No.7192 of 2002 on the file of learned XI Metropolitan Magistrate, Saidapet, Chennai and convict the accused.

For Appellant : No appearance

For Respondent 1 : Mr.R.Kishore Kumar
Government Advocate(Crl.side)

For R2 : M/S.D.Ashok Kumar

For R3 : No appearance



WEB COPY

JUDGMENT

This appeal is filed by P.W.2 namely Arulsundari aggrieved by the judgment dated 17.11.2014 passed by the 11th Metropolitan Magistrate Court, Saidapet in C.C.No.7192 of 2002 in and by which accused 1 to 4 in the case were acquitted of the offences under Sections 365, 342 r/w 149, 457, 380 r/w 149, 348 r/w 149, 354 r/w 149 of IPC.

2.The gist of the allegations on behalf of the prosecution is that on 12.09.1998, in the wee hours at 3.00am, the accused persons joined together and trespassed into the house of Thomas/P.W.1 and abducted P.W.1 /Thomas, his wife Arul Sundari/P.W.2/ appellant herein, his daughters Queen Rose, Arokiya Mary, Regina Mary/P.W.3 to 5 and another daughter one Vinnarasi and took all of them and kept them in the terrace of a house and thereafter, took them to office of the Sub Registrar, Kodambakkam and made them to sign in a few documents and thereafter left them near Velankanni Temple. When P.W.1 and other victims came back, they could see that their house was demolished and all their household articles were missing and taken away by the accused. Hence, the complaint.



3. On the strength of the said complaint, a case in Crime No.2159 of 1998 was registered and was taken up for investigation by P.W.22. After completing the investigation, the final report was filed proposing the accused guilty of the above said offenses. The Accused No.5 to 8 are still elusive and the case against them was split up. Upon furnishing of copies under Section 207 of Cr.P.C and questioning, the accused denied the charges and stood trial. Thereafter, to bring home the charges on behalf of the prosecution, P.W.1 to P.W.22 were examined and Exhibits P1 to P13 were marked. This apart, Material Objects 1 to 5 were also produced and Form 95 consisting the details of the jewels and money recovered was also produced. Upon questioning under Section 313 of Cr.P.C, about the material evidence and incriminating circumstances on record, the accused denied the same as false. No evidence was let in on behalf of the defence. However, during the course of the trial, Ex.P1 to Ex.P6 were marked. The Trial court thereafter proceeded to hear the learned Assistant Public Prosecutor and the learned counsel for the accused and by the judgment dated 17.11.2014 found that the charges are not proved. Aggrieved by the same, the present appeal against the acquittal is filed.



WEB COPY

4. When the matter came up for hearing on 13.12.2022, there was no representation for the appellant and so as to give one more opportunity to the appellant, the matter was adjourned. In spite of repeated adjournments on 19.01.2023 and 02.02.2023, there was no representation for the appellant and hence, the matter was posted finally today(03.02.2023). Even today, there is no representation on behalf of the appellant. Under these circumstances, this Court proceeded to consider the materials of the case.

5. Heard the learned Government Advocate (Crl.side) for the 1st respondent and Mr.D.Ashok Kumar, learned counsel for the 2nd respondent.

6. A Perusal of the grounds raised on behalf of the appellant, it is the contention of the appellant that the learned Magistrate ignored the fact that there was general and common intention among all the accused. It is the further contention that the 1st respondent also submitted a wrong and careless chargesheet before the learned Magistrate. Therefore, the learned Magistrate failed to protect the victims in this case. It is the further case of the appellant



that even the agreement of sale was obtained by force. The grounds also reiterate the allegations made by the appellant in their complaint.

7. Per contra, Mr.Ashok Kumar, learned counsel for the 2nd respondent would submit that this is a clear case of entering into a transaction and thereafter, attempting to wriggle out of the same by falsely alleging abduction and force. When P.W.1 and other family members have duly executed the agreement of sale and thereafter, the sale deed also have been registered, belatedly, they tried to impugn the said transaction only because they insisted for additional sale consideration and therefore, there is absolutely no merits in the complaint filed by the alleged victims in this case. He would further submit that subsequently, the civil suit filed by them impugning the very same sale deed has already been dismissed on merits and the matter has also become final and the appellant herein has not even carried the same on appeal. He would further submit that the findings of the Trial Court cannot be treated as perverse so as to interfere in this appeal against the acquittal.

8. The learned Government Advocate (Crl.side) for the first respondent would submit that according to the prosecution, it had collected all the



relevant materials and placed it before the Trial Court by examining the appropriate witnesses. However, the fact remains that no appeal has been preferred by the prosecution as against the judgment acquitting the accused persons.

9. I have considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

10. The Trial Court had considered the various answers given by P.W.1 in the cross-examination as to the earlier transactions, executing the Power of Attorney and also an agreement and therefore concluded that when nothing has been stated about the same in the earliest complaint, held that it is hard to believe the version of P.W.1. The cumulative reading of the evidence of P.W.1, P.W.16 and other witnesses and records relating the payment of the advance amount and the further sale consideration cannot be totally discarded. The Trial Court further held that due registration had taken place and the demolition having been taken place after the date of registration, the version of the defence that the dispute in civil in nature cannot be discarded and taking into consideration of the above findings, the Trial Court extended



the benefit of doubt and acquitted the accused.

WEB COPY

11. On perusal of the evidence of record and the findings of the Trial Court, such a view taken by the Trial Court can neither be termed as perverse nor can be termed as an impossible view. When the Trial Court, after appreciating the evidence, exercised its discretion and takes a view, this Court in an appeal against the acquittal will overturn the findings only in case of perversity or if the view of the Trial Court is not a possible view.

12. In that view of the matter, I find that the judgment of the Trial Court exercising its discretion granting benefit of doubt to the accused is a possible view and therefore, this appeal against the acquittal has to fail. Further, none of the grounds raised by the appellant point out as to the material evidence which is available on record so as to hold that the prosecution has proved its case beyond the doubt. On the contrary, it is the case of the appellant itself that a very weak charge sheet was filed. If that be the case, appropriate steps had to be taken by the appellant at the relevant stage and now such a contention cannot be taken into account. It is also



pertinent to see that the Trial Court has also concluded that this matter is a case worth agitating before the Civil Court and factually also, it is brought to the notice of this Court by the learned counsel for 2nd respondent that such a civil suit was actually filed and dismissed. In that view of the matter, this appeal is dismissed as without any merits.

13. Accordingly, this Criminal Appeal is dismissed.

03.02.2023

Index :Yes/No
Internet:Yes/No
Speaking/Non speaking order
nr

To

- 1.The learned XI Metropolitan Magistrate, Saidapet, Chennai
2. The Inspector of Police
CBCID
Metro Wing
Chennai-2
3. The Public Prosecutor,
Madras High Court, Madras.



WEB COPY



9

D.BHARATHA CHAKRAVARTHY,J.

nr

CrL.A.No.128 of 2015



WEB COPY



03.02.2023