



Criminal Appeal Nos.667 of 2015 & 350 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal Nos.667 of 2015 & 350 of 2016

and

Crl.M.P.No.11077 of 2017

1.Vadivel

S/o.Venkattan

2.Vetrivel

S/o.Shanmugam

... Appellants in Crl.A.No.667/2015/
Accused Nos.2 & 3

Gurudev

S/o.Gunaseelan

... Appellant in Crl.A.No.350/2016/
Accused No.1

Vs.

State of Tamil Nadu

represented by

The Inspector of Police,

A.Pallipatti Police Station,

Dharmapuri District.

Crime No.292 of 2013

... Respondent/Complainant in both appeals



Criminal Appeal Nos.667 of 2015 & 350 of 2016

Prayer : Criminal Appeals filed u/s.374(2) of the Code of Criminal Procedure against the judgment passed by Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.149 of 2014, dated 31.08.2015.

For Appellants
[Crl.A.No.667/2015] : Mr.M.Karthik
for Mr.M.Prabakar
[Crl.A.No.350/2016] Mr.G.Mohan
for Mr.S.Kumara Devan

For Respondent : Mr.L.Baskaran
[in both appeals] Government Advocate [Crl.side]

COMMON JUDGMENT

As both the appeals arise out of one and the same judgment, they are considered and decided by this common judgment.

2. These criminal appeals have been filed by A1 to A3 against the judgment and order passed by the Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.149 of 2014, dated 31.08.2015, convicting A1 and A2 for offence u/s.392 r/w 397 IPC and sentencing each of them to undergo seven years rigorous imprisonment. Insofar A3 is concerned, he was convicted for offence u/s.392 r/w 397 r/w 34 IPC and sentenced to undergo



seven years rigorous imprisonment.

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3. The case of the prosecution is as follows:

3.1. On 05.10.2013, at about 03.45 p.m., when PW-1 was walking on the Chinna Erikodu road, the accused persons came to the place in a two-wheeler and A3 was watching the movements in and around at that place, A1 was sitting in the two-wheeler readily to pick up A2 and A3 after committing the crime and A2 is said to have thrown chilli powder in the eyes of PW-1 and thereafter, had taken away the gold chain weighing 2½ sovereigns. Thereafter, all the three accused escaped in the two-wheeler.

3.2. PW-1 gave a complaint [Ex.P1] before the A.Pallipatti Police Station on 05.10.2013 at about 07.30 p.m. Based on the complaint, one Gopal, who was the Sub-Inspector of Police, registered the First Information Report [Ex.P9] in Crime No.292 of 2013 for offence u/s.392 IPC. The First Information Report was registered as against two unknown persons.

3.3. PW-13, Inspector of Police, took up the investigation and he went



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to the scene of occurrence on 06.10.2013 at about 07.00 a.m. and prepared the observation mahazar marked as Ex.P4 and rough sketch marked as Ex.P10. He recorded the statement of the victim PW-1. He also enquired the neighbours and recorded their statements u/s.161(3) Cr.P.C. PW-13 in the course of investigation, arrested all the three accused persons on 25.11.2013 at about 09.00 a.m. The confession statements of all the three accused persons were recorded in the presence of witnesses PW-7 and PW-8 and the admissible portions in the confession statements of all the three accused persons were marked as Exs.P11 to P13. Based on the confession given by the accused persons, PW-13 came to know that the gold chain [MO-2] was handed over to one Anbazhagan [PW-9]. PW-9 with the help of his wife PW-10 pledged the gold chain in the Primary Co-operative Societies Bank, Neepathandurai and had received a sum of Rs.20,000/-.

3.4. On coming to know of the same, PW-13 after recording the statements of PW-9 and PW-10, proceeded to the Co-operative Bank and recovered the gold chain and also recorded the statements of PW-11 and



PW-12, who are the Secretary and Valuer working in the said Bank.

3.5. PW-13, after collecting all the concerned documents pertaining to pledging of gold chain, recorded the statements of all other witnesses and ultimately, filed the final report on 31.01.2014 before the learned District Munsif cum Judicial Magistrate, Pappireddipatti. Learned Judicial Magistrate served copies on the accused persons u/s.207 Cr.P.C. and the case was remitted u/s.209 Cr.P.C. before the Principal District and Sessions Court, Dharmapuri and it was made over to the Court below.

3.6. The Court below framed charge against A1 and A2 for offence u/s.392 r/w 397 IPC and as against A3 for offence u/s.392 r/w 397 r/w 34 IPC. When the charge was put to the accused persons, they denied the same.

3.7. The prosecution examined PW-1 to PW-13 and marked Exs.P1 to P15 and identified and marked MO-1 and MO-2. The incriminating evidence that was gathered during the course of trial was put to the accused



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persons, when they were questioned u/s.313(1)(b) Cr.P.C and they denied the same as false.

3.8. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has made out a case beyond reasonable doubts and accordingly, convicted and sentenced the accused persons in the manner stated supra. Aggrieved by the same, these criminal appeals have been filed before this Court.

4. Heard Mr.M.Karthik and Mr.G.Mohan, learned counsel for appellants and Mr.L.Baskaran, learned Government Advocate [Crl.side], appearing for respondent/State.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The evidence of PW-1 gains lot of significance in this case since



she is the victim from whom the gold chain was robbed by the accused persons. PW-1 while giving the complaint before the police station, has not identified any accused person by name. While registering the First Information Report, it was registered only against two unknown persons. Admittedly, no test identification parade was conducted by PW-13 in the course of investigation.

7. PW-1 while deposing before the Court did not even identify the accused persons and the prosecution did not even care to put a specific question in this regard. Unfortunately, the trial Court also did not intervene and put any question to PW-1 with regard to their identity in the Court. PW-1 in her deposition stated that while she was walking on the road, two accused persons came in a two-wheeler, A2 attacked PW-1 and also thrown chilli powder in her eyes and had taken away a portion of the gold chain. Whereas, based on the materials that were placed while filing the final report, the Court below has framed the charge by stating that it was A2, who had thrown chilli powder and A1 and A2 had taken away the gold chain.



The role of A3 was only to watch the movements in and around the house. PW-1, in her evidence, has further stated that she knows all the accused, but she does not know their names. If this statement made by PW-1 is taken as true, she could have very well identified the accused. But, in this case, no Test Identification Parade was conducted.

8. PW-2 is the husband of PW-1 and he deposed that he received information over phone, immediately rushed to the scene of occurrence and went to the police station and gave the complaint. PW-3 and PW-4 are the residents, who are living in and around the locality. These witnesses are more in the nature of *res gestae* witnesses and both of them state that they heard about the occurrence. PW-4 further stated the he also went to the police station. These witnesses also did not identify the accused persons in the Court.

9. PW-5 and PW-6 had deposed that police prepared observation



mahazar [Ex.P5] and enquired them.

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10. PW-7 and PW-8, who are witnesses to speak about the arrest and recovery, turned hostile. Nothing much comes out of the evidence of these two witnesses.

11. The other crucial witness, who was examined on the side of prosecution was PW-9, who is said to have received the gold chain from A2 and pledged it in the Co-operative Bank with the help of PW-10. This witness also turned hostile and his evidence also does not in anyway help the case of the prosecution.

12. PW-10 is the wife of PW-9 and who helped PW-9 to pledge the gold chain in the Co-operative Bank. PW-10 has deposed to the effect that PW-9 requested her to pledge the gold chain in the Co-operative Bank in which PW-10 was a member and accordingly, PW-10 pledged the gold chain and handed over a sum of Rs.20,000/- to PW-9. Thereafter, on coming to



know that the gold chain was a stolen property, PW-10 repaid the sum of Rs.20,000/- and the pledged gold chain was redeemed and handed over to police. This process took place after the police came into the scene pursuant to the complaint given by PW-1. Even though it is the case of the prosecution that a portion of the gold chain was retained by PW-1 and it was marked as MO-1 and MO-2 is only the remaining portion of the gold chain, the evidence of PW-10, PW-11 [Secretary of the Co-operative Bank] and PW-12 [Valuer of the Co-operative Bank] makes it abundantly clear that what was pledged and redeemed was a complete chain. In view of the same, there is a very serious doubt with regard to the recovery of the gold chain and what was shown as MO-2 by the prosecution to be the chain that was recovered, is in complete mismatch to that of what was pledged and redeemed by PW-10.

13. The evidence of PW-10 to PW-12 does not in any way help the prosecution in fixing the accused persons in this case. It must be borne in mind that a mere recovery cannot lead to conviction and sentence of



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accused persons unless they have been properly identified by witnesses. In other words, recovery will only be one link in the chain of circumstances and that by itself will not lead to conviction and sentence.

14. There is yet another important factor that has to be taken into consideration by this Court. The accused persons are said to have travelled in a two-wheeler and had come to the place of occurrence and after robbing the gold chain, had escaped in that two-wheeler. On the confession of the accused persons, the two-wheeler is said to have been recovered along with a knife. Curiously the two-wheeler has not even been marked as a material object in this case. Hence, there was no opportunity for any of the witnesses to identify at least the two-wheeler in which the accused persons are said to have come to the scene of occurrence and escaped from there.

15. PW-13 is the investigation officer in this case. It is quite unfortunate that the investigation officer did not resort to Test Identification Parade. In his entire evidence, PW-13 does not say as to how he came to



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know that A1 to A3 had committed the crime. The investigation officer merely states that he heard that the accused persons were roaming around and thereafter, he arrested them and they were remanded to judicial custody. The investigation officer probably thought that mere recovery of the material object was enough to convict any person, who is shown as accused person before the Court. The accused persons were neither identified during the course of investigation nor they were identified by any of the witnesses in the Court.

16. The trial Court had proceeded further in this case merely on the basis of recovery and insofar as the identity of the accused persons is concerned, the trial Court has rendered its findings on mere surmises and assumptions. There is no question of identifying an accused person on assumptions and it involves a very important right guaranteed to any person under Article 21 of the Constitution of India and punishing a person even without proper identity, will directly impinge upon the liberty that is guaranteed under Article 21 of the Constitution of India. In a case of this



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nature, the Court should not be swayed by mere emotions and the Court must necessarily ensure that the accused persons are properly identified. If such a procedure is not followed, anybody can be made as an accused person in a given case on mere recovery and in all probabilities, the person, who is shown as an accused will have nothing to do with the case. On many occasions, the police find it convenient to bring in some habitual criminal and show him as an accused in the case. Such line of investigation should never be encouraged and just because someone is a habitual criminal, that does not mean that he must be held responsible for every crime that takes place in the society. Such attitude will cause a dent in the criminal justice system and will make the officers ineffective when they investigate serious crimes.

17. In the light of the above discussion, this Court has absolutely no hesitation to interfere with the judgment and order passed by the Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.149 of 2014, dated

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31.08.2015 and accordingly, the same is set aside. The appellants are acquitted from all charges and the bail bonds executed by them shall stand discharged and fine amount, if any, paid by them shall be refunded to them.

In the result, these Criminal Appeals are allowed. Consequently, connected miscellaneous petition is closed.

03.04.2023

Index : Yes/No,
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
gm

To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri.
- 2.The Inspector of Police,
A.Pallipatti Police Station,
Dharmapuri District.
- 3.The Public Prosecutor,
High Court, Madras.

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