



Crl.A.No.20 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

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M.Vinaykumar

... Appellant

Vs.

State :

Rep. by the Inspector of Police,
B-9, Saravanampatty Police Station,
Coimbatore.

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) Criminal Procedure Code 1973, against the judgement and orders dated 18.12.2017 passed in S.C.No.145/2012 by the IV Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr.R.Vijayaraghaven

For Respondent : Mr.S.Raja Kumar,
Additional Public Prosecutor.



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JUDGMENT

Challenging the conviction and sentence dated 18.12.2017 passed in S.C.No.145/2012 by the IV Additional District and Sessions Judge, Coimbatore, the present criminal appeal is filed by the appellant / fourth accused.

2. The appellant stood charged for the offences punishable under Sections 411 and 413 IPC by the trial court in S.C.No.145/2012.

3. The learned trial court Judge, after full trial, convicted and sentenced the appellant, vide his judgment dated 18.12.2017, as detailed hereunder.

<i>Conviction</i>	<i>Sentence</i>
Section 411 IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of two months.
The aforesaid sentences shall run concurrently. The period of sentence already undergone by him shall be set off	



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<i>Conviction</i>	<i>Sentence</i>
under Section 428 Cr.P.C.	

The learned trial court judge found the accused not guilty of the offence under Section 413 IPC and acquitted him under Section 235(1) Cr.P.C.

4. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

4.1. Thiru.Paneerselvam (P.W.1) is residing at Door No.9(A), Ashok Nagar, Maniyakarampalayam, Coimbatore. On 03.10.2011 at about 6.00 a.m., P.W.1 received a call from his father stating that his grandfather is unwell. Therefore, he went to Gandhipuram with his wife in a two wheeler and came back home at about 8.45 p.m. on the same day. He saw some persons scaling his compound wall. P.W.1 attempted to apprehend them but all the accused made good their escape. P.W.1 went inside his house and found the back door of his house broken. On further search, he found the bureau inside his bedroom was also broken and 35 sovereigns of gold jewels and a cash of Rs.40,000/- had gone



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4.2. P.W.1 immediately lodged a written complaint (Ex.P1) with Thiru.K.R.Rajan (P.W.10), the then Sub Inspector of Police, Saravanpatty Police Station, Coimbatore, at about 12.15 hours (midnight). P.W.10 received the complaint (Ex.P1) from P.W.1 and registered FIR (Ex.P13) in Crime No.1041/2011 against unknown persons for the offences punishable under Sections 457 and 380 IPC. He then placed the records before Thiru.S.Ilango (P.W.12), the then Inspector of Police, Saravanampatty Police Station, Coimbatore.

4.3. P.W.12 took up investigation, went to the scene of occurrence, prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P14) in the presence of the witnesses Purushothaman (not examined) and Easwaramurthy (P.W.5). He received an intimation from Karaikudi Police Station that the accused Mani @ Manikandan, Raghu @ Raghuraman and Muthu @ Muthukumar were arrested in connection with Crime No.407/2011 of Karaikudi Police Station for the offences



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punishable under Sections 457 and 380 IPC and that they have confessed the commission of the present offence. P.W.12, thereafter, obtained necessary Prisoner Transfer Warrant (Ex.P16) from the Judicial Magistrate No.II, Coimbatore, and arrested the accused 1 to 3. He took them to police custody and recorded their confessional statements in the presence of the witnesses Vijayaraja (P.W.7) and Sasikumar (P.W.9). Based on their confession, P.W.12 went to the jewellery shop owned by the present appellant and arrested him. He also recorded the confessional statement of the present appellant in the presence of the same witnesses and recovered the jewels (M.O.4, M.O.9 and M.O.10) under the cover of a seizure mahazar (Ex.P7).

4.4. P.W.12, after completing investigation, laid a final report against the accused 1 to 3 for the offences punishable under Sections 457 and 380 IPC and for the offences under Sections 411 and 413 IPC against the present appellant before the Judicial Magistrate No.II, Coimbatore, in P.R.C.No.12/2012.



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4.5. The learned Judicial Magistrate after furnishing copies of records to the accused under Section 207 Cr.P.C, committed the case to the Court of Sessions. The learned Principal District and Sessions Judge, Coimbatore, took the case on file in S.C.No.145/2012 and made over the same to IV Additional District and Sessions Judge, Coimbatore.

4.6. In order to bring home the guilt of the appellant, the prosecution examined 12 witnesses, marked 16 documents and 10 Material Objects.

4.7. The appellant, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side.

4.8. The learned trial court judge after analysing the oral and documentary evidence on record, convicted and sentenced the appellant as stated in paragraph No.3, vide her judgment and orders dated

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18.12.2017, aggrieved over which, the appellant / fourth accused has preferred the present appeal.

5. Heard Mr.R.Vijayaraghaven, learned counsel for the appellant and Mr.S.Raja Kumar, learned Additional Public Prosecutor for the respondent.

6. Mr.R.Vijayaraghaven, learned counsel for the appellant contended that the prosecution has not established that the appellant received the gold jewels from the accused knowing that they were stolen articles. It is also his contention that based on the confessional statement of the co-accused, the appellant cannot be punished for the offences punishable under Section 411 IPC.

7. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court after analysing the oral/documentary evidence, rightly convicted and sentenced the appellant and therefore, no interference is called for by this court and prayed for



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WEB COPY dismissal of the present appeal.

8. The prosecution, in order to prove its case against the appellant mainly relies on the confessional statement of the accused 1 to 3 and the confessional statement of the appellant which led to the recovery of the gold jewels (M.O.4, M.O.9 and M.O.10).

9. It is pertinent to point out that the confessional statement made before a police officer is inadmissible in evidence. However, Section 27 of the Indian Evidence Act, creates an exception to the admissibility of confession made by the accused to a police officer while in custody. It provides that when any fact is discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. In the instant case, the admissible portion of the confession statement of the fourth accused was marked as Ex.P12 based on which the jewels M.O.4, M.O.9 and M.O.10 were



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recovered. However, the prosecution has miserably failed to establish that the appellant had the knowledge that the jewels seized from him were stolen as mentioned in the confession of the other accused. The factum of selling gold at a low price itself cannot lead to the conclusion that the appellant was in know of the fact that the articles which he received were stolen. The prosecution has also failed to produce the records to show that the appellant received the stolen jewels at a very low price. Thus, the prosecution has not produced any *iota* of evidence before this Court to conclude that the appellant, with his knowledge received the gold jewels stolen by the accused 1 to 3. In the circumstances, the conviction and sentence passed by the trial court judge against the appellant for the offence punishable under Section 411 IPC cannot be sustained and therefore, the appeal is allowed.

10. In the result,

- i. the Criminal Appeal is allowed.
- ii. the judgment and orders dated 18.12.2017 passed in S.C.No.145/2012 by the IV Additional District and Sessions



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WEB COPY Judge, Coimbatore, is set aside.

iii. the appellant (fourth accused in S.C.No.145 of 2012) is acquitted from all the offences, of which he is charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

mtl



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To

1. The IV Additional District and Sessions Judge, Coimbatore.
2. The Inspector of Police, B-9, Saravanampatty Police Station, Coimbatore.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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R. HEMALATHA, J.

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