

State Rep. By Vs. Respondent

State Rep. By Vs. Respondent

SooperKanoon Citation : sooperkanoon.com/16338

Court : Chennai

Decided On : Dec-16-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : State Rep. By

Respondent : Respondent

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 16.12.2014 CORAM THE HONOURABLE Ms.JUSTICE R.MALA Criminal Appeal (Md.No.1208 of 2003 State rep.

By The Sub Inspector of Police, Karaikudi Police Station (Crime) Crime No.3 of 1995 ..Appellant versus %Subramanian ..Respondent Prayer: Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the judgment of acquittal passed in C.C.No.55 of 1999 on the file of the Judicial Magistrate No.1, Madurai dated 27.11.2002.

%For Appellant : Mr.S.Shanmugavelayutham, P.P.Assisted by Mrs.S.Prabha, G.A

^For Respondent : Mr.D.Ramesh Kumar :

JUDGMENT

Judgment Reserved : 12.12.2014 Judgment Pronounced : 16.12.2014 The Criminal Appeal is directed against the judgment of acquittal dated 27.11.2002 passed by the Judicial Magistrate No.1, Madurai in C.C.No.55 of 1999 for the

offence under Section 411 of I.P.C.2.The prosecution case in brief is as follows: (i) P.W.1 Kanagaraj was residing at Karaikudi New Town and running a hotel in Kovilur Road in the name and style of 'Annapoorna Hotel'.

On 25.04.1994 at about 06.00 a.m., P.W.2 Seeni @ Murugan has break open his house and stolen the following articles: (i) a gold chain with thali - 14 sovereign, (ii)white colour necklace 11-1/2 sovereign, (iii)another gold chain - 4 sovereign, (iv)another chain - 5 sovereign, (v).pair of bangles with while and red stone - 6 sovereign, (vi).pair ordinary gold bangles - 3-1/2 sovereign, (vii)one gold ring with initials G.K - s sovereign, (viii)'U' shape gold ring - s sovereign, (ix)lotus design gold ring - 1 sovereign, (x)white umbrella jimikki - s sovereign and (xi)one ear ring with white and red stones - 1 sovereign.

P.W.1 received an intimation about the theft and gave a complaint Ex.P1 before the Police Station.

(ii)Out of the stolen properties, P.W.2 kept two items and gave other items weighing 39-1/2 sovereigns to one Subramanian, who is the accused/respondent herein and running a jewellery shop in the name of 'New Maharaja JewelleRs.for a sum of Rs.62,600/- in the fourth month of 1994 in the presence of P.W.3 Pechi and P.W.4 Kannan, who had come to the shop of the respondent/accused for purchasing the jewels.

(iii)In the 8th month of the same year, he again sold one pair ear ring and one pair small ear rings weighing 6 grams for a sum of Rs.1,200/- to the respondent/accused Subramanian.

When he had gone to Madurai and met the respondent/accused, he gave a sum of Rs.2,000/- and told him not to go to Karaikudi.

But, when again he attempted for another theft at Karaikudi, he was arrested by the police under suspicion in the presence of P.W.5 Antony and P.W.6 Mohammed Kani and he has given a confession statement, Ex.P.2 stating about the earlier theft and regarding the sale of the jewels to the respondent/accused.

Thereafter, he was brought to Sellur and identified one Meenakshi, Pechi and Kannan and thereafter they went to the house of respondent/accused and P.W.2 identified him, where the respondent/accused handed over the jewels, which was received by the police.

(iv)P.W.8 Kannan was the Sub Inspector of Police, Karaikudi Police Station.

While he go through the file in crime No.549 of 1994 for the offence under Section 457 and 380 of I.P.C., he came to know that out of the stolen jewels, P.W.2 has sold out 39-1/4 sovereigns to the respondent/accused for a sum of Rs.1,200/- Therefore, on 11.01.1995, he registered a case in crime No.4 of 1995 for the offence under Section 411 of I.P.C.and prepared Ex.P4, fiRs.information report and examined the witnesses Meenakshi and Muthiah.

On 21.01.1995, he went to Central Jail, Madurai and recorded the statement of P.W.2, who was convicted for the said offence and after completion of due investigation, he filed charge sheet against the respondent/accused for the offence under Section 411 of I.P.C.3.The learned trial Judge after following the procedures, framed necessary charges against the accused.

Since the accused pleaded not guilty, to prove the charges, P.Ws.1 to 8 were examined and Exs.P1 to P4 were marked.

Accused was questioned under Section 313 Cr.P.C.about the incriminating evidence and circumstances.

Accused denied the same and stated that a false case has been foisted against them.

D.Ws.1 and 2 were examined and Exs.D1 to D3 were marked on the side of the defence.

4.On considering the oral and documentary evidence, the learned Judicial Magistrate No.1, Madurai found the respondent/accused not guilty for the offence under Section 411 of I.P.C.and acquitted him from the charge levelled against him.

Challenging the judgment of acquittal, the State has preferred the present Criminal Appeal.

5.Mr.Shanmugavelayutham, the learned State Public Prosecutor would submit that the trial Court has not considered the evidence of P.W.2, who has deposed that he has sold the stolen properties to the respondent/accused.

He would further submit that the trial Court ought to have rejected the evidence of defence witness Balasubramanian, who was the Secretary of Madurai JewelleRs.Association and co-member of the said association along with the accused.

6.He would further submit that it is the duty of the respondent/accused to prove that the seized properties are belonging to him.

But, he has not proved the same and that factum was not considered by the trial Court and hence, he prayed for setting aside the judgment of acquittal.

7.Resisting the same, the learned counsel appearing for the respondent/accused would submit that the respondent is an innocent and on the fateful day on 20.09.1994 at about 10.00 a.m., when the respondent was in his shop, at the time, the Sub Inspector of Police and Inspector of Police, Karaikudi Police Station entered in to the shop along with a lady by name Pechi, P.W.3 along with six or seven persons and informed that they sold 40 sovereigns of gold and it must be returned in the form of gold ingots and the respondent informed that he had not received any gold from P.W.3 herein, and he intimated the matter to Jewellery OwneRs.Association.

8.He would further submit that on 12.10.1994, in the midnight at 12'O clock, when P.W.1 after closing the shop, went to his house in his scooter, he was way laid by the Sub Inspector of Police and 7 others and he was pushed down and assaulted and he was taken to the police jeep and was taken to North Police Station, Karaikudi and also he was threatened at the gun point and they had taken away six sovereigns of gold chain, three sovereigns of gold bracelet and one ring, which was worn by the respondent/accused and also took a sum of Rs.2,390/- which

was kept in his packet and thereafter, they demanded 27 sovereigns of jewels and then only, he would be released and on that basis, on 15.10.1994, the wife of P.W.1 handed over 27 sovereigns of gold and the same was converted into gold ingots and that factum was correctly considered by the trial Court and hence, the respondent has not received any stolen properties.

9.He would further submit that here P.W.1 who was the complainant in previous case in C.C.No.54 of 1999 has not identified the properties.

P.W.2, who was the accused also has not identified the jewels and hence, the trial Court has rightly acquitted the respondent/accused.

10.He would further submit that the respondent herein has given complaint against the Sub Inspector of Police and the Inspector of Police, who were ill treated and assaulted him and after investigation, charge sheet has been filed and they were facing criminal case in C.C.No.23 of 1997 and even though the same was ended in acquittal, the respondent/accused has preferred a revision, which was allowed and the trial Court has considered all the aspects in proper perspective and come to a correct conclusion and there is no reason for setting aside the acquittal and hence, he prayed for dismissal of the appeal.

11.The learned counsel for the respondent/accused would pray for the returning back of the jewels which were seized from him by the police.

12.Considering the submission made by both sides and on perusal of the typed set of papers.the case of the prosecution is that the respondent/accused had purchased the stolen properties from P.W.2 Seeni @ Murugan.

P.W.1, Kanagaraj, in his evidence has deposed that on 25.04.1994 at about, 6.00 a.m., he received a phone call from his house that his house has been break open and jewels were stolen and hence, P.W.1 has given a complaint Ex.P1.

He further deposed in his evidence that in the 11th month, he has taken back the jewels.

13.P.W.2, Seeni @ Murugan, who was the accused in the said theft case has deposed that he has sold the stolen properties to the respondent/accused.

In his cross examination, he has fairly conceded that he was having 17 criminal cases and he has deposed that the respondent/accused has handed over the jewels as it was, which were given by him.

The evidence of P.W.2 itself is not trustworthy.

Because, he is a habitual offender and hence no relevance can be placed on his evidence.

14.It is pertinent to note that the jewels alleged to be stolen from the house of P.W.1 were not produced before the Court to identify that the said jewels alone were recovered from the respondent/accused herein.

P.W.3 Petchi has deposed in her cross examination that during the police enquiry, she has told that Seeni has sold Thali chain, bangles studded with stones and gold ingots.

Perusal of her evidence would show that she is a relative of one Poongodi, who was the convicted prisoner and hence, no relevance has been placed in her evidence.

15.Considering the evidence of P.Ws.1 to 3, P.W.1 in his evidence has deposed as to what are the jewels found missing.

He has further deposed that in the 11th month, he has gone to the police station and identified his jewels and has taken back the same.

Whereas, P.W.3 in his cross examination has stated that Seeni has sold Thali chain, bangles studded with stones and ingots.

16.As per the evidence of D.W.1, he has deposed that he alone has handed over 27 sovereign of ingot and that has been corroborated by D.W.2.

It is pertinent to note that after receipt of the 27 sovereign of gold ingot only, the respondent/accused set free and subsequently, he was prosecuted.

But, as soon as, the respondent/accused was released, he sent a legal notice to P.W.8 Kannan, Sub Inspector of Police and a case has been registered in crime No.37 of 1995 by the District Crime Branch, Madurai.

Evidence of D.W.2 would also show that the 27 sovereign gold ingot, which was seized from the respondent/accused is not the stolen property.

The evidence of P.W.1 itself is not trustworthy, since he has stated that he received the jewels after identifying the same from the police station.

Evidence of D.Ws.1 and 2 have clearly stated that on 12.10.1994, the respondent/accused was abducted by the Sub Inspector and Inspector of Police, Karaikudi Police Station and then only, they forcibly obtained 215.610 gram of gold ingot and thereafter, they released the respondent/accused.

17.Admittedly, P.W.1 in his evidence has deposed that he has taken back the jewels from the police station, after identifying the same.

But, the respondent/accused has stated that his chain weighing 6 sovereign and bracelet weighing 3 sovereign and one ring and a sum of Rs.2,390/- have been seized by the police.

Therefore, there is no evidence to show that the gold jewels which were seized from the respondent/accused are belonging to P.W.1.

It is appropriate to incorporate Section 411 of I.P.C.?.411.Dishonestly receiving stolen property.- Whoever dishonestly receives or retains any stolen property, known or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years.or with fine, or with both.?.

Admittedly, the case of prosecution is that the police has seized the material objects from the respondent/accused.

In the above said circumstances, there is no iota of evidence to show that the stolen properties of P.W.1 was recovered from the respondent/accused and hence, I am of the view that the ingredients of Section 411 of I.P.C.has not been proved by the prosecution beyond all reasonable doubt.

Hence, the trial Court has rightly considered the same and come to the conclusion and the judgment of acquittal does not warrant any interference and the judgment of acquittal is liable to be confirmed and the appeal is liable to be dismissed.

18.The learned counsel appearing for the respondent/accused prayed for returning of the jewels, which were seized from him by the police.

Once the respondent was acquitted from the charge under section 411 of I.P.C., he is entitled for the material objects, which were seized from him by the police.

To avoid multiplicity of proceedings and instead of to give a direction to the respondent to file a separate application for returning of jewels viz., 6 sovereign chain, 3 sovereign bracelet and one ring and cash of Rs.2,390/- and 216.610 gram gold ingot, it is appropriate on the part of this Court to direct the appellant/State to return the jewels of the respondent/accused, which was seized from him.

21.In the result Criminal Appeal is dismissed.

Judgment of acquittal passed in C.C.No.55 of 1999 on the file of the Judicial Magistrate No.1, Madurai dated 27.11.2002, is hereby confirmed.

The appellant is directed to return back the jewels viz., 6 sovereign chain, 3 sovereign bracelet and one ring and cash of Rs.2,390/- and 216.610 gram gold ingot, which were seized from the respondent/accused by the police, within a period of three months from the date of receipt a copy of this judgement.

16.12.2014 Index : Yes/No Internet : Yes/No arul To 1.The The Sub Inspector of Police, Karaikudi Police Station.

(Crime) 2.The Judicial Magistrate No.I, Madurai.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

R.MALA, J.

Arul Pre Delivery judgment in Criminal Appeal (Md.No.1208 of 2003 16.12.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com