

Arockiasam Vs. State Represented By

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Court : Chennai

Decided On : Dec-02-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : Arockiasam

Respondent : State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

02. 12.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA Criminal Appeal (MD)No.330 of 2007 Arockiasamy : Appellant/Accused Vs. State represented by The Inspector of Police, Samayanallur Police Station, Madurai District. : Respondent/Complainant Prayer : Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 03.06.2005 made in S.C.No.79 of 2005, on the file of the learned Additional Sessions Judge (Fast Track Court No.3), Madurai. !For Appellant : Mr.R.Murugappan ^For Respondent : Mrs.S.Prabha, Government Advocate (Crl.side) :

JUDGMENT

Challenge in this appeal is to the judgment dated 03.06.2005 made in S.C.No.79 of 2005, on the file of the learned Additional Sessions Judge (Fast Track Court No.3), Madurai.

2. The case of prosecution, in brief, is as follows: (i) On 16.06.2004 at 05.00 a.m., P.W.1-Jeyaraman, the defacto complainant was proceeding along Madurai Road. P.W.2 Murugesan and P.W.3 Selvaraj were coming behind him. At that time, the accused waylaid P.W.1, who wore a gold chain, by brandishing knife and robbed the gold chain (M.O.1) at the knife point and ran away from the place of occurrence. When P.W.1 shouted, P.Ws.2 and 3 came there. All of them chased the accused and he was brought to the police station, where he produced M.O.1-gold chain and M.O.2 knife. Then P.W.1 gave the complaint Ex.P.1 to one Subbiah, Head Constable. P.W.4 Deva and P.W.5 Baskar also accompanied P.W.1. (ii) P.W.9 received the complaint Ex.P.1 registered in Crime No.184 of 2004 by the Head Constable by name Subbiah, who is dead, for the offences under Sections 392 and 506(ii) IPC and prepared Ex.P.3-F.I.R. P.W.9 then proceeded with the investigation and prepared an observation mahazar Ex.P.2 and Ex.P.4 rough sketch in the presence of witnesses P.W.7-Vedamuthu and P.W.8-Jesu. Thereafter, he came back to the Samayanallur Police Station and arrested the accused. After examining the witnesses viz., P.Ws.1 to 8 and 3 other witnesses, he laid the charge sheet against the accused for the offences punishable under Sections 392 r/w 397 and 506(ii) IPC. (iii). The learned trial Judge, after following the procedures, framed necessary charges against the accused. Since the accused denied the same in toto and pleaded not guilty, to prove the charges, P.Ws.1 to 9 were examined and Exs.P.1 to P.5 were marked, besides marking M.Os.1 and 2 on the side of the prosecution. On completion of the examination of the witnesses on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied the same as false. On behalf of the defence, neither the witness was examined nor document was marked. (iv). The learned trial Judge, after considering the oral and documentary evidence, convicted the accused for the offences punishable under Sections 392 r/w 397 and 506(ii) IPC and sentenced him to undergo 7 years RI, to pay a fine of Rs.1,000/-, in default in payment, to undergo 3 months RI for the offence punishable under Section 392 r/w 397 IPC and also sentenced him to undergo 2 years RI for the offence punishable under Section 506(ii) IPC.

3. Being aggrieved over the judgment of conviction and sentence, the appellant is before this Court with the present appeal.
4. Heard both sides.
5. Challenging the conviction and sentence, the learned counsel for the appellant would raise the points stating that no identification parade has been conducted, since the defacto complainant P.W.1 was not aware of the accused previously. The second limb of the argument is that there is a contradiction in the deposition of P.W.1 and complaint Ex.P.1 and printed F.I.R. Ex.P.3 as well as arrest of the accused by P.W.9 and hence, he prayed for setting aside the conviction and sentence.
6. Resisting the same, the learned Government Advocate (Criminal side) would submit that P.W.1 is the defacto complainant. P.Ws.2 and 3 are the eye witnesses. P.Ws.4 and 5, who were on para- duty, caught red handed the accused, from whom material object M.O.1-Gold chain belonging to P.W.1 was recovered. Hence, there is no necessity for conducting identification parade. She would further submit that First Information Report is not an encyclopedia. Hence, non-mentioning details in F.I.R. is not fatal to the case of the prosecution. The arrest has been correctly deposed by P.W.9- Kalifullah, Inspector of Police. Contending that the Trial Court has considered the same in proper perspective and came to the correct conclusion, she prayed for dismissal of the appeal.
7. Considering the rival submissions made by both sides and on perusal of the typed-set of papers, it is seen that as per the evidence of P.W.1, Jeyaraman, the defacto complainant, on 16.06.2004 at 05.00 a.m., when P.W.1 was proceeding to attend the nature's call, followed by P.W.2-Murugesan and P.W.3-Selvaraj, the accused waylaid him at the knife point and made a life threat and took away M.O.1-Gold Chain and immediately, P.W.1 made a hue and cry. On hearing the noise, P.W.4 and P.W.5, who were on para-duty, came there and they caught red handed the accused along with M.O.1 and M.O.2 with the help of P.Ws.1 to 3. Even though P.W.1 was not personally aware of the accused, there is no necessity for conducting identification parade. One more adding circumstance is that M.O.1-Gold chain is belonging to P.W.1. That has been seized from the

accused as soon as he was caught red handedly. In such circumstances, I am of the view that there is no necessity for conducting identification parade. Therefore, the argument advanced by the learned counsel for the appellant that non-conducting identification parade is fatal to the case of the prosecution does not merit acceptance.

8. Insofar as the contention that there is a contradiction between the oral evidence of P.W.1 and also the complaint Ex.P.1 and printed F.I.R. Ex.P.3 is concerned, it is the well settled dictum of the Apex Court that F.I.R. is not an encyclopedia. In such circumstances, non-mentioning details in F.I.R. is not fatal to the case of the prosecution, since the evidence of P.W.1 was corroborated by the evidence of P.Ws.2,3,4 and 5. The arrest of the accused has been spoken to by them. Therefore, I am of the view that the argument of the appellant's counsel that there is a contradiction between the oral evidence of P.W.1 and contents in the complaint as well as F.I.R. is fatal to the case of the prosecution does not merit acceptance.

9. Coming to the contention that when the accused has been caught red handed and he was produced before the police station, P.W.9-Kalifullah, Inspector of Police arrested the accused only after visiting the place of occurrence and preparing observation mahazar and rough sketch, which will fatal to the case of the prosecution, I am of the view that the above argument does not hold good, because as per the evidence of P.Ws.4 and 5, they handed over the accused along with material objects to one Head Constable by name Karuppiah. P.W.9 took up the matter for investigation and went to the place of occurrence and after preparing observation mahazar and sketch, he came back to Samayanallur Police Station and arrested the accused. Thus, the arrest made by P.W.9 does not affect the case of the prosecution. Therefore, the argument advanced by the learned counsel that arrest made by him after sometime, even though he was produced by P.Ws.4 and 5, is not fatal to the case of the prosecution. Thus, the Trial Court has rightly considered the evidence of P.Ws.1 to 5 and came to the correct conclusion that the accused was found guilty under Sections 392 r/w 397 IPC.

10. In respect of the offence under Section 506(ii) IPC, P.W.6 (Chelladurai) has deposed how the accused made a criminal intimidation. On going through the evidence of P.Ws.1 to 6, I do not find any reason to discard their evidence, since their evidence are natural, cogent and trustworthy. On considering the evidence of P.W.6, the Trial Court has rightly held that the accused is also found guilty under Section 506(ii) IPC. Therefore, I do not find any reason to interfere with the finding of the Trial Court.

11. However, the learned counsel for the appellant would submit that since the appellant was in custody for 4 + years, he wants some leniency in sentence. The trial Court sentenced him to undergo 7 years RI, to pay a fine of Rs.1,000/-, in default in payment, to undergo 3 months RI for the offence under Section 392 r/w 397 IPC and also sentenced him to undergo 2 years RI for the offence under section 506(ii) IPC. It is reported that fine amount has already been paid.

12. In respect of Section 392 r/w 397 IPC, the minimum punishment is 7 years. Furthermore, on perusal of the deposition of P.W.9, it is seen that the accused was involved in so many cases. Therefore, I am of the view that the punishment of 7 years imposed by the Trial Court is just and reasonable and hence, it does not require any reduction. As such, the sentence imposed is also, hereby, confirmed.

13. In fine, The Criminal Appeal is dismissed. Judgment of conviction and sentence dated 03.06.2005 made in S.C.No.79 of 2005, on the file of the learned Additional Sessions Judge (Fast Track Court No.3), Madurai is hereby confirmed. The Bail bond executed by the appellant, if any, shall stand cancelled. The learned Additional Sessions Judge (Fast Track Court No.3), Madurai is directed to secure the custody of the appellant/accused to undergo the remaining period of sentence. Both the sentences are ordered to run concurrently. 02.12.2014 Index:Yes/No Internet:Yes/No SML R.MALA, J.

SML To 1.The Additional Sessions Judge (Fast Track Court No.3), Madurai. 2.The Inspector of Police, Samayanallur Police Station, Madurai District. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. Judgment made in Criminal Appeal (MD)No.330 of 2007 Dated:

02. 12.2014

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