

Mandaiyan @ Suresh Vs. The State, Rep. by The

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Court : Chennai

Decided On : Jun-11-2015

Judge : S.Nagamuthu

Appellant : Mandaiyan @ Suresh

Respondent : The State, Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 11.06.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU CrI.A(MD)Nos.23 of 2004 CrI.A(MD)Nos.707, 721, 726, 797 and 804 of 2004 Mandaiyan @ Suresh .Appellant in CrI.A.(MD).No.23/2004/ Accused No.9 Kathiresan .Appellant in CrI.A.(MD).No.707/2004/ Accused No.5 Sathish Kumar .Appellant in CrI.A.(MD).No.721/2004/ Accused No.8 A.Nehrupandi .Appellant in CrI.A.(MD).No.726/2004/ Accused No.4 1.Saravanan 2.Balakrishnan .Appellants in CrI.A.(MD).No.797/2004/ Accused Nos.3 & 7 Kadiresan .Appellant in CrI.A.(MD).No.804/2004/ Accused No.1 versus The State, rep.

by the Inspector of Police, Usilampatti Police Station, Madurai District.

(Crime No.811/2000) .Respondent in all the appeals/ Complainant COMMON PRAYER Criminal Appeals filed under Section 374 of Cr.P.C.against the conviction and sentence passed by the learned Additional District and Sessions Judge (Fast Track Court No.I).Madurai, dated 11.05.2004, in S.C.No.526 of 2001.

!For appellant in Crl.A.(MD).No.23/2004 : Mr.R.Anand For appellant in Crl.A.(MD).No.707/2004 : Mr.S.Mahendrapathy For appellant in Crl.A.(MD).No.721/2004 : Mr.R.Gandhi For appellant in Crl.A.(MD).No.726/2004 : Mr.G.Karuppasamy Pandian, Legal Aid Counsel For appellant in Crl.A.(MD).No.797/2004 : Mr.J.Ayyam Bose, Legal Aid Counsel For appellant in Crl.A.(MD).No.804/2004 : Mr.P.Arumugam, Legal Aid Counsel ^For respondent in all the appeals : Mr.C.Mayilvahana Rajendran, Addl.

Public Prosecutor :COMMON

JUDGMENT

Since all these appeals arise out of one and the same judgment, these appeals were heard together and they are disposed of by this common judgment.

2.The appellant in Crl.A.(MD).No.804 of 2004 is the 1st accused; the appellants in Crl.A.(MD).No.797 of 2004 are the 3rd and 7th accused; the appellant in Crl.A.(MD).No.726 is the 4th accused; the appellant in Crl.A.(MD).No.707 of 2004 is the 5th accused; the appellant in Crl.A.(MD).No.721 of 2004 is the 8th accused; and the appellant in Crl.A.(MD).No.23 of 2004 is the 9th accused in S.C.No.526 of 2001 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.I).Madurai.

The second accused in this case is one Mr.Suresh, who has not made any appeal against his conviction.

The 3rd accused viz., Mr.Saravanan (one of the appellants in Crl.A.(MD).No.797 of 2004) and the 6th accused viz., Mr.Kaviraj, are stated to be dead.

Thus, there were totally 9 accused in this case.

The trial Court, by judgment dated 11.05.2004, convicted all the accused under Section 395 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for six months.

Challenging the said conviction and sentence, the appellants have come up with these appeals.

3.The case of the prosecution in brief is as follows; (a) PW1 is a resident of Bodinayakkanoor and he was employed under a businessman.

He used to go over to many places to collect the amount, on account of the business, carry the same to Bodinayakkanoor and hand over the same to his employer.

The employer would pay commission for the said work.

On 09.12.2000, he came to Madurai and collected a sum of Rs.3,00,000/- from Mahesh Dates Merchant; Rs.50,000/- from one Surath Electrical Shop; Rs.5,00,000/- from one Santhilal Plastic Shops; Rs.2,50,000/- from one Sakanlal Utensils shops.

Thus, he had made a total collection of Rs.11,00,000/-.

He kept it in a jeans bag (MO.1) and from Arapalayam Bus-stand in Madurai, he travelled in M.A.K.Bus to go to Theni.

He was sitting in the 5th seat from the driver seat in the bus.

(b) When the bus was nearing a Village called Nottampattai near Usilampatti, a Tata Sumo Car over took the bus and came in front of the same, forcing the driver to stop the bus.

The bus was accordingly stopped.

Three persons from the car came near the bus and entered into the same.

One of them, tied the hands of PW1 behind and the others fisted him stating that he was carrying counterfeit currency notes.

Then, they forced him to come out of the bus and the bus went away.

Then, three persons took him into the TATA Sumo Car.

In the car, there were already six persons.

Some of them had knives with which they intimidated him not to raise any alarm.

TATA Sumo was driven, along with PW1, to a distance of half kilometre.

Thereafter, they snatched away the cash of Rs.11 lakhs, pushed him from the vehicle and vanished from the scene of occurrence.

By about 4.00 a.m., PW1 informed his employer Mr.Haji about the incident.

Then, he went to Usilampatti Police Station and made a complaint under Ex.P1.

(c) PW14 - Head Constable attached to Usilampatti Police Station registered a case in Crime No.811 of 2000 under Section 397 I.P.C.Ex.P21 is the FIR.

Then, he forwarded Ex.P1 and Ex.P21 to the Court and handed over the case for investigation to PW16 ?.

the Inspector of Police.

(d) Taking up the case for investigation, PW16 proceeded to the place of occurrence, prepared an observation mahazar and rough sketc.showing the place of occurrence.

He examined PW1 and other witnesses.

On 14.12.2000 at about 5.00 a.m.at Thirumangalam, PW16 arrested the 7th accused in the presence of PW10.

From him, PW16 recovered a sum of Rs.15,000/- and a TATA Sumo Car (MO.2).On the same day, he arrested the accused Nos.1, 8, 6, 3 & 4.

On the confession of A8, a sum of Rs.5,000/- was recovered from his person under a mahazar.

From the 6th accused, he recovered a sum of Rs.87,000/-.

From the 3rd accused he recovered a sum of Rs.90,000/- and from the 4th accused, he recovered a sum of Rs.1,02,000/-.

From the fiRs.accused, he recovered a sum of Rs.3,19,000/-.

Then the accused were brought to the Police Station and sent for judicial remand.

On his request, PW15 ?.

Judicial Magistrate conducted test identification parade on 29.12.2000 in the prison.

During the same, PW1 identified all the 9 accused on three occasions correctly.

On completing the investigation, he laid charge against all the accused.

(e)Based on the above materials, the trial Court framed charge under Section 395 IPC against all the accused.

The accused denied the same.

In order to prove its case, the prosecution had examined as many as 16 witnesses and marked 42 documents.

Out of the said witnesses, PW1 - defacto complainant, from whom the cash is stated to have been stolen away, has vividly spoken about the occurrence.

He has also spoken about the identification of the accused made by him before the learned Judicial Magistrate.

He has also identified the accused in the Court.

He identified MO.1, Jeans Bag, in which he had put Rs.11 lakhs, which was stolen by the accused.

PWs.2, 3, 4, 5, 6 & 12 have stated about handing over their cash to PW1, who had come for collection.

PW7 is the driver of the bus, who has stated that there was no such occurrence at all on the said date.

He has been treated as hostile.

PW8 is the conductor of the bus, who has also stated so and therefore he has also been treated as hostile.

PW9, who is the Ticket Checker of the bus, has also turned hostile.

PW10 has spoken about the arrest of the accused, the confessions given by them and the consequential recovery of the cash made.

PW13 ?.

Mahazar Witness, has turned hostile and has not supported the case of the prosecution in any manner.

PW14 has spoken about the registration of the case and PW15 - learned Judicial Magistrate has spoken about the identification parade held and PW16 has spoken about the investigation done.

(f)When the above incriminating materials were put to the accused, they denied the same as false.

On their side, one Saiyad Zafer has been examined.

He is the Head Clerk of the learned Judicial Magistrate Court.

He has stated that Mr.Karuppaiyaa viz., PW1 had made application to the learned Magistrate on 26.12.2000 for return of the cash.

In the petition, according to him, there is an overwriting regarding the cash.

Having considered the above materials, the trial Court convicted all the accused under Section 395 IPC and accordingly punished them.

That is how they are before this Court with these appeals.

4.The learned counsel for the appellant in Crl.A.(MD).No.804 of 2004 viz., Mr.V.Murugesan has not made appearance repeatedly.

Therefore, one Mr.P.Arumugam, a member of the Madurai Bar was appointed as a State Brief Counsel.

He argued the case in Crl.A.(MD).No.804 of 2004.

I have heard the learned counsel appearing for the other appellants and the learned Additional Public Prosecutor appearing for the State.

I have also perused the records carefully.

5.According to the case of the prosecution, the occurrence had taken place in the bus bearing Registration No.TN-59-B-6482 on 09.12.2000 at 8.45 p.m.But, PWs.6, 7 & 8 who are the Driver, Conductor and Checker of the bus, have turned hostile and they have not supported the case of the prosecution.

Thus, in order to speak about the occurrence, the prosecution has relied only on the evidence of PW1.

6.In the information lodged by him, PW1 had stated about the physical appearance of only three accused and not about the otheRs.The accused, according to the case of the prosecution, were all arrested on 14.12.2000 and they were put up for test identification parade on 29.12.2000.

Now, the question is whether any weightage can be given for the identification made by PW1 in the test identification parade.

As I have already pointed out, in the fiRs.information report as well as during the subsequent examination, PW1 had not given the details of the physical features of the assailants.

Not only that, he has admitted during cross examination that after all the accused were arrested, he had occasion to see them in the Police Station.

The investigating officer during the cross examination has admitted that PW1 identified all these accused in the Police Station after arrest.

It is crystal clear that PW1 was shown all the accused prior to the test identification parade.

Therefore, no weightage can be given to the identification made by him in the test identification parade.

It is too well settled that the identification made in the test identification parade is only corroborative in nature and the same cannot be taken as substantive evidence.

The substantive evidence is one which is given in the Court.

Of-course, in this case, PW1 identified all the accused in the Court after few years of the occurrence.

But, since, at the earliest point of time, he did not give the physical features of the assailants and since the test identification parade has lost its value, the identification of the accused made for the fiRs.time in the Court by PW1 cannot have any weightage.

7. Apart from that, the prosecution nextly relies on the arrest of the accused, the confession made and the consequential recoveries.

Admittedly, according to the case of the prosecution, what was recovered from the accused was only cash.

The cash cannot be, in any manner, linked with the crime or the accused.

Therefore, from the recovery of the cash, one cannot rush to the conclusion that they are stolen articles.

MO.1 - Jeans Bag alone could be identified by PW1.

In the chief examination, he has stated that it was in that bag he had kept the cash.

But, PW10, in whose presence the accused were arrested, has not stated anything about the recovery of bag (MO.1). Even the investigating officer has also not stated anything about the same.

Thus, the only evidence which could be at the most go to the help of the prosecution has also been lost.

8. Apart from these circumstances, the other evidences are that PW1 had gone to Madurai and collected Rs.11 lakhs from various persons and those persons have also deposed before the Court that the cash was handed over to PW1.

Thus, it is crystal clear that PW1 had Rs.11 lakhs in his bag at the time of the occurrence.

Except the proof of the said fact, the prosecution has not proved any other incriminating materials against the accused.

Therefore, the accused are entitled for acquittal.

9. In the result, these appeals are allowed and the conviction and sentence imposed on the appellants in S.C.No.526 of 2001 are set aside and they are acquitted.

The bail bond, if any, shall stand terminated.

The fine amount, if any, paid shall be refunded.

The Legal Aid Services Authority is directed to pay fees to Mr.P.Arumugam, Mr.G.Karuppasamy Pandian and Mr.J.Ayyam Bose, who argued the cases for the appellants in CrI.A.(MD).Nos.804, 726 and 797 of 2004 respectively.

11.06.2015 Index : Yes / No Internet : Yes / No gcg To 1. The Additional District and Sessions Judge (FTC No.I). Madurai.

2. The Inspector of Police, Usilampatti Police Station, Madurai District.

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

S.NAGAMUTHU, J.

gcg Crl.A(MD)Nos.23, 707, 721, 726, 797 and 804 of 2004 11.06.2015

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