

Raja @ Sethu Raja Vs. State Rep. by The

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Court : Chennai

Decided On : Jul-23-2015

Judge : S.Nagamuthu

Appellant : Raja @ Sethu Raja

Respondent : State Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

23. 07.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
Crl.R.C.(MD).No.631 of 2006 Raja @ Sethu Raja .. Petitioner/ Appellant/Accused
No.1 Vs. State rep. by the Inspector of Police, F1, S.S. Colony Police Station,
Madurai. (Crime No.2206 of 1998) .. Respondent / Respondent/Complainant
PRAYER Criminal revision filed under Sections 397(i) r/w 401 of Cr.P.C. against
the judgment, dated 28.07.2005, made in C.A.No.246 of 2004 by the learned
Additional District and Sessions Judge, Fast Track Court No.III, Madurai,
confirming the conviction and sentence, dated 25.10.2004, made in S.C.No.155 of
2003 by the learned Assistant Sessions cum Chief Judicial Magistrate, Madurai.
!For Petitioner : Mr.J.Sulthan Basha Legal Aid Counsel ^For respondent :
Mr.P.Kannithevan, Government Advocate :

ORDER

The appellant is the first accused in S.C.No.155 of 2003 on the file of the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Madurai. Including the petitioner, there were totally five accused in the case. They stood charged for the offences under Section 395 r/w 397 IPC. By judgment dated 25.10.2004, the trial Court convicted all the five accused under Section 395 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/- each, in default to undergo rigorous imprisonment for six months. Challenging the same, the petitioner filed an appeal in CrI.A.No.246 of 2004. The learned Additional District and Sessions Judge (Fast Track Court No.III), Madurai, by judgment dated 28.07.2005, dismissed the appeal, thereby confirming the conviction and sentence imposed by the trial Court. Challenging the same, the petitioner is before this Court with this revision. 2.The case of the prosecution in brief is as follows; (a) PW2 in this case is one Mrs.Subbulakshmi. PW1 is her husband. PW17 - Mrs.Leelavathi is the mother of PW1. On 09.11.1998, PWs.2 & 17 alone were in their house bearing Door No.45-C, at Parthasarathi Street, SS Colony, Madurai. At about 8.15 p.m. these accused came to their house and stood outside the house, as the main entrance was closed. They rang calling bell. PW2 went near the Door and opened it. At that time, the accused told her that they had come to present a marriage invitation to them. Believing the said words, PW2 opened the door and went into the house to take a plate to enable them to keep the invitation card on the same and present the same to her in the traditional way. The accused 4 & 5 stood outside and the accused 1 to 3 entered into the house. They followed PW2 into the house and suddenly took out an aruval and threatened PW2 and PW17 not to raise any alarm. They also attacked PW2 with the blunt portion of the aruval on her shoulder. One of the accused also slapped her on her face. Then, to keep them under threat, the accused 1 to 3 wanted PW2 to open the bureau and take out of the valuables. Out of fear for them, PW2 opened the bureau locker. The accused, then, took out jewels, weighing 238 sovereigns and cash of Rs.30,000/-. They tied PW2 and PW17 with ropes and then, leaving them inside the house, they ran away with looted articles. (b) After some time, PW2 tried to untied the knot and freed herself. Then, she untied the ropes with which PW17 had been tied. Thereafter, PW2 went to the house of PW4, who was her neighbour and told PW4 about the entire occurrence. PW1 was in his Hotel. PW4 informed PW1

about the occurrence. PW2 also spoke to him over phone. It came to light that telephone connection from the house of PW1 had been disconnected by the culprits. Then, PW1 rushed to his house at around 10 p.m. Then, he went to S.S.Colony Police Station and made a complaint, upon which the present case was registered in Crime No.2206 of 1998 under Section 392 IPC. Ex.P1 is the complaint and Ex.P26 is the FIR. Before presenting the complaint, PW1 verified in the bureau about the details of the jewels stolen away. He gave a list of the properties stolen away under Ex.P2, along with the complaint. (c) PW18 - Mr.Muthuramalingam, the then Inspector of Police attached to S.S. Colony Police Station, took up the case for investigation. He went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of witnesses. He also recovered a pair of chappel from the place of occurrence, which had been left behind by one of the culprits. PW18 requested the Forensic Expert to visit the place of occurrence and help. PW15 - the Finger Print Expert came to the place of occurrence and found a chance finger print in the safety locker of the stolen bureau, from where the jewels were stolen away. (d) During the course of investigation, PW18 arrested the accused 2 & 4 on 19.03.1999 at about 1. 30 p.m., at Arasaradi, in the presence of PW6 and one Rajagopal. The second accused gave a voluntary confession, which was reduced into writing by PW18. In the said confession, the second accused had disclosed the place where he had hidden the stolen articles. The fourth accused also gave voluntary confession, which was also reduced into writing by PW18 in the presence of PW6 and another witness. He disclosed the place where he had hidden some of the stolen articles. On the same day, at 4.45 p.m. in pursuance of the said disclosure statement, the second accused took PW18 and the witnesses to Oomachikulam burial ground, Samayanallur, and took out M.O.1 (Irattavada gold chain) and MO.2 (gold bangles) which were kept in a polythene bag (MO.31). PW18 recovered the same in the presence of PW6 and another witness. (e) Then, the second accused identified the first accused. The first accused was arrested on 20.03.1999 at about 7.30 a.m. He made a confession and out of which one Rajeswari (PW8) was identified. From PW8, MO.5 (Vellai-kal Neckless), MO6. (Long Chain) and MO.7 (Vellai Pasi Malai) were all recovered in the presence of PW6 and another witness. In pursuance of the disclosure statement made by the

fourth accused, one Mr.V.R.Ganesan (PW.9) was identified, from whom MO.9 (Gold chain) was recovered in the presence of PW6 and another witness. Then, on the same day, at 11.30 a.m. one G.Murugesan (PW14) was identified by A4, from whom MO.10 (Gold bangles) were recovered in the presence of PW6 and another witness. At 02.00 p.m. on 24.03.1999, the fifth accused was identified and he was arrested. He also gave a voluntary confession. Out of the said confession, MO.11 (Dollar chain), MO.32 (Camera) and MO.12 (gold ring) were all recovered in the presence of PW6 and another witness. Then, the fifth accused took the Police and the witnesses to the house of PW10, from whom, MO.13 (stoned gold ring) and MO.14 (gold ring) were recovered in the presence of PW6 and another witness. Then, the fifth accused identified one Pattammal, from whom MO.15 (Thanga Kasu Malai) and MO.16 (gold bangles) were recovered in the presence of PW6 and another witness. (f) Then, the fifth accused identified the third accused, who was found near Dindigul Railway Crossing and on arrest, the third accused gave a voluntary confession, out of which also various stolen articles were recovered. A sample finger print was taken from the first accused and the same was sent for examination. The Finger Print Expert (PW15) gave opinion that the chance print lifted from the locker of the steel bureau from the house of PW2 tallied with that of the finger print of the first accused. PW15 has spoken to the said fact. Ex.P25 is the Finger Print Expert report. The arrested accused were sent for judicial remand. The recovered articles were produced before the Court. On completing the investigation, a charge sheet was laid against all the five accused. (g) Before the trial Court, in order to prove the charges, as many as 19 witnesses were examined, 27 documents were exhibited and 35 material objects were marked. Out of the said witnesses, PW.2 & PW.17 have spoken about the entire occurrence. They have also identified stolen articles. PW1 has also identified the stolen articles. During the identification parade held, PW2 and PW17 have correctly identified the first accused during the test identification parade. PW5 is an auto-driver. According to him, before the occurrence, all these accused travelled in his auto to the house of PW1. He has also identified the first accused during the identification parade. PW15 - Finger Print Expert has stated that the finger print of the first accused tallied with that of the chance finger print found at the place of occurrence. PW6 has spoken about the arrest of the accused, confessions made

by the accused and the consequential recovery made. The investigating officer has vividly spoken about the investigation done. 3. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor mark any documents on their side. Having considered all the above, the trial Court convicted all the accused under Section 395 IPC. The appeal filed by the petitioner / A1 was also dismissed. That is how, the petitioner is before this Court with this revision. 4. This revision has been pending from the year 2006. Though the matter was listed, on several hearings, there was no representation for the petitioner. Therefore, this Court was impelled to appoint a Legal Aid Counsel. Accordingly, Mr. J. Sulthan Bash, learned counsel was appointed by this Court as Legal Aid Counsel to argue the case of the petitioner. Today, I have heard him and the learned Government Advocate appearing for the respondent.

5. I have also perused the records carefully.

6. The learned counsel for the petitioner would submit that the evidence let in by the prosecution do not go to clinchingly prove the case against the first accused. The learned counsel has taken me through the records in an attempt to substantiate his contention. But, I do not find any merit at all in this revision. The two courts below have appreciated the evidence and have come to the conclusion that the charge against the accused has been proved beyond reasonable doubts. In order to satisfy the judicial conscience of this Court, I have also gone through the records. There is no denial that there was no such occurrence at the house of PW1 on the crucial date. As per the evidences of PWs. 2 & 17, they alone were in the house and there is no denial of the fact that such an occurrence had happened involving five persons. But, the question is whether these accused are those five persons actively involved in the crime. In order to connect the first accused, there are sufficient materials on record.

7. First of all, the chance finger print lifted from the safety locker of the bureau from where the jewels were looted tallied with the finger impression of the first accused. There is no reason to reject this scientific evidence. The first accused has got no explanation at all to the question as to how his finger print had come to be present

on the locker of the bureau. Secondly, on the arrest of the first accused, some of the stolen articles, as narrated hereinabove, were recovered at the instance of the first accused. The properties have been duly identified as stolen articles by PW1, PW2 & PW17. The presumption under Section 114 of the Indian Evidence Act against the accused has not been rebutted by the first accused in any manner. Apart from that, during the identification parade itself, PW6, PW2 & PW17 have identified the first accused viz., the petitioner herein. Before the Court also they have identified him. Thus, there is no reason to doubt the identification of the petitioner at all. Apart from that, PW5, who is an auto-driver, has stated that he only carried those five accused in his auto to the house of PW2 at the crucial time. He has also identified the accused at the identification parade. Thus, more than sufficient evidence is available to hold that the petitioner/A1 has committed offence punishable under Section 395 IPC. Absolutely, there is no reason to interfere with the same.

8. The learned counsel for the petitioner would submit that the petitioner had been in jail for more than three years and seven months and he has no bad antecedent. Therefore, according to him, the sentence may be reduced. In my considered opinion, it is not at all possible. Sentencing a criminal to undergo appropriate imprisonment is essential in the administration of criminal justice. Going by the gravity of the offence and also mitigating circumstances projected by the learned counsel for the petitioner, I do not find any reason to reduce the sentence at all. The sentence of rigorous imprisonment for five years and fine of Rs.1,000/- imposed by the trial Court are very reasonable, which do not require any interference at the hands of this Court. 9. In the result, I do not find any merit in this Criminal Revision Case. This Criminal Revision Case fails and accordingly, the same is dismissed. The bail bond, if any, executed by the petitioner shall stand terminated. The trial Court is directed to take steps to secure the petitioner/accused and commit him to prison so as to serve out the remaining period of sentence.

10. The service rendered by Mr.J.Sulthan Basha, the learned Legal Aid Counsel for the petitioner is appreciated. The Legal Services Authority is directed to pay his remuneration. To 1. The Additional District and Sessions Judge, Fast Track Court

No.III, Madurai. 2.The Assistant Sessions cum Chief Judicial Magistrate, Madurai.
3.The Inspector of Police, F1, S.S. Colony Police Station, Madurai. 4.The
Government Advocate, Madurai Bench of Madras High Court, Madurai. .

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