

Anandan and anr. Vs. State

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Court : Chennai

Decided On : Aug-18-1998

Reported in : 1999CriLJ1368

Judge : M. Karpagavinayagam, J.

Acts : [Probation of Offenders Act, 1958](#); Indian Penal Code (IPC) - Sections 380, 392, 394, 397 and 463

Appeal No. : Crl. R.C. Nos. 807 and 878 of 1995

Appellant : Anandan and anr.

Respondent : State

Advocate for Def. : C.M. Gunasekaran, Govt. Adv.

Advocate for Pet/Ap. : K. Asokan and ;C. Prasanna Venkatesh, Adv.

Disposition : Petition dismissed

Judgement :

M. Karpagavinayagam, J.

1. Crl. R.C. No. 807/95 and Crl. R.C. No, 878/95 are being disposed of by a common order.

2. Nagarajan (A 1), the petitioner in Crl. R.C. No. 878/95 and Anandan (A2), the petitioner in Crl. R.C. No. 807/95 were convicted in S.C. No. 226/91 on the file of the learned Assistant Sessions Judge, Poonamallee for the offence under Section 392 read with 397, I.P.C and sentenced to undergo R.I. for 7 years with fine of Rs. 500/-, in default to undergo R.I. for 3 months each. As' against the said conviction, the petitioner Nagarajan filed an appeal in C:A. No. 46/94 and the petitioner Anandan filed C.A. No. 48/94 before the Sessions Court, Changanassery, which in turn confirmed the conviction and sentence. Hence, these Revisions.

3. The facts are theses:-

(i) The petitioner Nagarajan was working as a Carpenter along with other persons under the contractor P.W. 8 Sundaravelan in the house of P.W. 1 Vijayalakshmi: The said Vijayalakshmi was residing in Door No. 151, Devi Karumariamman Nagar, Valasaravakkem along with her husband, daughter-in-law, son and grand children. Her husband used to go for work in the factory at Nungambakkam. Her daughter-in-law has been working as a teacher in Padma Seshadri School, K. K. Nagar. During the relevant time, her son was not at the station. He was working in some shipping company in some other station.

(ii) On 31-7-91 morning, when all the inmates left the home for doing their job, P.W. 1 Vijayalakshmi was alone in the house. At about i 1.00 a.m., the petitioner Nagarajan came along with the petitioner Anandan, to the house. The petitioner Nagarajan requested P.W. 1 to trace out the Hacksaw blade which was left in the house, as directed by his Maistry P.W. 8. P.W. 1 tried to locate the said hacksaw blade, but it was not available. When this was informed to the petitioner, Nagarajan, he requested for a tumbler of water, P.W. 1 went inside the house and brought water and gave it to Nagarajan. Then, A2 also requested for water. Therefore, P.W. 1 again went inside the house, took water and gave the tumbler of water to the petitioner Anandan. At that time, the petitioner Anandan with a bag stick beat on the head of the victim P.W. 1. She fell down and fainted. Then, A1 and A2 went inside the house and opened Almirah and took away the jewels and left the house.

(iii) After few minutes, P.W. 1 regained consciousness. She sustained serious injury on the head which was bleeding then. She came out of the house and requested P.W. 4 Jayalakshmi, who was residing in the opposite house, to inform her relatives. Since it was intimated to P.W. 2 daughter-in-law, who was working in the school, she came home. In the meantime, P.W. 3, the father of P.W. 2 came to the house and took the victim to the hospital. P.W. 10 Doctor examined her and gave treatment. Ex. P-6 is the wound certificate. According to the certificate, the injury was grievous.

(iv) P.W. 2 came to know that the victim was taken to the hospital. She then went to the police station and gave a complaint to P.W. 16, the Sub-Inspector of Police. The case was registered for the offence under Section 394, I.P.C. P.W. 17, the Inspector of Police, who took up the investigation, came to the scene along with photographer P.W. 15 and finger print expert P.W. 14. He then took chance finger print.

(v) P.W. 17 then came to the hospital and obtained the statement from P.W. 1 stating that the said Nagarajan along with one identifiable person has committed the offence. Then P.W. 17 examined P.W. 8 and through whom P.W. 17 was known the whereabouts of Al Nagarajan.

(vi) On 1-8-91, Al Nagarajan was arrested at 12.30 Noon and in pursuance of his confession, the jewels M.Os. 5, 7 and 15 were recovered. Thereafter, A1 took the police and pointed out A2 and A3 and they were arrested. A2 gave confession and from him jewels M.O. 8 Gold Thambu Saradu, MO. 6 Gold bangles and M.O.14 H.M.T. wrist watch were recovered. In pursuance of the confession of A3, the other articles were recovered.

(vii) During the course of investigation, all the jewels were identified by P.W. 1 and P.W. 2. Then, specimen finger prints were taken from the accused. P.W. 14 compared the finger prints and found that the petitioner Anandan's finger print was found tallied with the chance finger print found in the Almirah. Thereafter, on 5-8-91 P.W. 17 filed the charge sheet.

4. All these materials have been considered by the trial Court as well as the lower appellate Court and conviction was imposed upon the accused as referred to above. However, A3 was acquitted.

5. Mr. Asokan, learned senior counsel appearing for A2, Anandan, would submit the following :-

In the absence of the identification parade, the conviction on A2 cannot be based on the recovery alone. Though P.W. 17 would state that arrest and recovery were made on 1-8-91, P.W. 2 would admit in cross-examination that the jewels recovered were shown to her on 31 -7-91 itself and therefore, the arrest and the recovery were doubtful. Furthermore, the opinion of the finger print expert is not a conclusive proof to hold that the accused had committed the offence. Ex. D-1, the , list of the materials, must have been prepared at the police station and could not have been prepared at the spot as claimed, because the seal is affixed there, Specimen finger prints have been taken from the accused by the police for which no permission was sought for from the Magistrate. The identification in the Court without parade cannot be said to be acceptable in evidence.

6. Mr. Prasanna Venkatesh, the counsel appearing for A1, Nagarajan, while adopting the arguments of the counsel appearing for A2, would submit that, at any rate, the petitioner (A1) must be released under the Probation of Offenders Act.

7. In reply, the learned Government Advocate, resisted the said submissions in justification of the impugned judgments.

8. I have carefully considered the submissions made by the counsel for the parties.

9. P.W. 1, admittedly, knows A1 Nagarajan even prior to the occurrence. Even at the initial stage of the investigation, P.W. 1 stated that Nagarajan and another came to the house and attacked her. Therefore, no identification parade is necessary as far as A1 Nagarajan is concerned. But the question is whether the identification parade is necessary as far as A2 is concerned.

10. It is true, as pointed out by learned counsel for the petitioner Anandan, as laid down in *State of U.P. v. Charles Gurmukh Sobhraj* : 1996 CriLJ3844 that the identification in the Court is valueless, in the absence of identification parade.

11. However, reliance has been placed by learned Government Advocate on the decision of the Apex Court in *Ronny alias Ronal James Alwaris v. State of Maharashtra* : 1998 CriLJ1638 , wherein it is observed as follows (at page 1649 (of Cri LJ)):

We have already laid down above that the identification of the accused by a witness if he had an opportunity to interact with him or to notice his distinctive features lends assurance to his testimony in Court and that the absence of corroborative evidence by way of test identification parade would not be material.

12. In the instant case, it is seen that the occurrence had taken place in the day time. Moreover, P.W. 1 has stated in her cross-examination that both the accused had conversation with her before the occurrence took place at 11.00 a.m. As requested by the accused, she went inside the house and took water and gave it to both of them. Therefore, in the facts and circumstances of the case, it cannot be said that the failure to conduct identification parade would affect the credibility of the prosecution witness.

13. Furthermore, there are other materials to connect the petitioner Anandan with the commission of the crime. The Finger Print Expert's report Ex. P-26 and his evidence before the Court would make it clear that Anandan (A2)'s finger print was tallied with the chance finger print found in the Almirah. Admittedly, the petitioner Anandan is a stranger. If the finger print of Nagarajan was available, it could be said that being carpenter, Nagarajan was already working in the said house and in those occasions, there was a possibility of presence of Nagarajan's finger print in the articles found in the house. But in the case of Anandan, who came to the house for the first time, no such argument could be advanced.

14. Of course, it is true that the opinion of the finger print expert alone cannot decide the issue. As stated earlier, the opinion of the Finger Print expert is considered to be corroborative, when other materials are available. In the instant

case, as pointed out by learned counsel, Ex. P-25 was prepared only after receipt of summons from the Court. But, it must be noticed that even before that, the report was in the file and the result of the same was informed to P.W. 17. Therefore, it cannot be said that the report filed by P.W. 14 at the time of deposition was a fabricated one.

15. Much was said about the admission made by P.W. 1 that the jewels were shown to P.W. 1 on the same day night and as such, the arrest and recovery are doubtful. On perusal of the deposition of P.W.2, it is clear from the cross examination by A2 that she stated as follows:

(Tamil version omitted-Ed.)

From this, it could not be inferred about the occurrence date. As stated earlier, when she was cross examined by A2, she specifically stated as follows :

(Tamil version omitted-Ed.)

16. That apart, nothing was elicited from P.W. 17, the Inspector of Police and the mahazar witness to show that the petitioners were arrested on the date of occurrence itself. Therefore, there cannot be any suspicion about the arrest and recovery.

17. It was said that Ext. D-1, the list of articles, was prepared at the police station and not at the spot, as claimed. The relevant statement by P.W. 17 would clarify the said position.

(Tamil version omitted-Ed.)

18. It is not the case of the petitioners that no specimen finger print was taken from the accused. In fact, though there is a section which provides for getting specimen finger print with the permission of the Magistrate, It is also provided under the relevant section that the police officers are also competent to take specimen finger prints from accused. So, in the light of this, the failure to obtain permission from the Magistrate Cannot be a ground to reject the case of the prosecution. Therefore, I do not find any ground to interfere with the findings rendered by both

the Courts below.

19. Several authorities have been cited before me on behalf of the petitioner Nagarajan to invoke the Probation of Offenders Act, namely, (1) Darshan Kumar v. Jabalpur Municipality AIR 1973 SC 906 : 1973 Cri LJ 384; (2) Mohd. Aziz v. State of Maharashtra : 1976 CriLJ583 and (3) Masarullah v. State of Tamil Nadu : 1983 CriLJ1043 . In my view, the petitioner Nagarajan cannot be entitled to be shown any indulgence under the Probation of Offenders Act, because he was already convicted in the year 1991 for the offences under Sections 463 and 380, I.P.C. on his pleading guilty.

20. Therefore, both the Revisions, which have no merits are liable to be dismissed and accordingly, the same are dismissed.

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