
(2010) 04 MAD CK 0349

In the Madras High Court

Case No : Criminal Appeal No's. 512, 517 and 1458 of 2003

Kali @ Thangasamy and Others

APPELLANT

Vs

State, Inspector of Police

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 395

Citation : (2011) 2 RCR(Criminal) 932 : (2011) 2 RCR(Criminal) 932

Hon'ble Judges : P. Murugesan, J

Bench : Single Bench

Advocate : N. Duraisamy, for the Appellant; I. Paul Noble Devakumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Murugesan, J.—These criminal appeals have arisen out of the judgment passed by me Additional District and Sessions Judge, Ariyalur, dated 11.3.2003 in S.C. No. 90 of 1988, convicting the accused Nos. 3,5 to 8 u/s 395, I.P.C. and sentencing them to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/- each, in default to undergo simple imprisonment for six months.

2. The case of the prosecution in a nut-shell is as follows:

(i) P.W. 2-Seshadri Pattachariar is a resident of Vikiramangalam Village. He is Archakar of Varadaraja Perumal Temple at Vikkiranman-galam Village. Since, there is no Archakar in Vedanarayana Perumal Temple at Sripuranthan Village, he is performing the duty of Archakar in the said Temple also. In the said temple, he used to perform pooja from 9.00 to 10.30 a.m. After performing the pooja, he used to hand over the key to the watchman, by name, Govindan. He is fully aware of the idols in the Vedanarayana Perumal Temple viz., M. Os. 1 to 8.

(ii) P.W. 1-Devarajan is the Village Administrative Officer of Sripuranthan Village.

Vedanarayana Perumal Temple is situated within his jurisdiction. P.W. 3, Govindasamy Pillai is the trustee of the said temple. To the said temple, there were two watchmen viz., Subramanian and Govindasamy. P.W. 4-Govindasamy and P.W. 5-Kaliaperumal, who are residents of the Sripuranthan Village came to know about the theft of idols viz., M. Os. 1 to 8, on the midnight of 12.8.1986. On 12.8.1986 at about 1.00 a.m., the people of the said village went to the house of P.W. 1-Devarajan, Village Administrative Officer and informed him about the theft of temple idols.

(iii) Immediately, P.W. 1-Devarajan, Village Administrative Officer went to the temple. He obtained a statement-Ex. P-1 from Subramanian and then he prepared a report-Ex. P-2 and he also obtained a statement from Govindan-Ex. P-3 and he sent the same to Vikkiramangalam Police Station.

(iv) F.W. 13-Periyasamy is the Head Constable of Vikkiramangalam Police Station. On 13.8.1986, on receipt of report from the village Administrative Officer, he registered a case in Cr. No. 68 of 1986 u/s 395, I.P.C. and sent a printed F.I.R.-Ex. P-22. He despatched the F.I.R. to Court and superior officials.

(v) One Ramalingam, who was the then Inspector of Udayarpalayam, has taken up the investigation of the case. P.W. 18- Rajasekar, Sub-Inspector of Police, assisted him in the investigation. The said Ramalingam is not alive now. But, P.W. 18, who was assisting him in the investigation of this case is aware of his signature. During investigation, the said Ramalingam, then Inspector went to the scene of occurrence on 13.8.1986 at about 9.30 am. and he prepared an observation Mahazar-Ex. P-5 in the presence of P.W. 6- Ramachandran and one Lakshmanan and had also drawn a rough sketch-Ex. P-28. He seized three material objects under Ex. P-6 and he had also seized a Hero Jet cycle bearing No. A-917698 under Ex. P- 7; in which the P.W. 6-Ramachandran and Lakshmanan had put their signatures. M. Os. 9 to 23 are also recovered on that day in the presence of P.W. 6-Ramachandran.

(vi) The Hero Jet cycle was purchased by P.W. 7-Neelamegam from P.W. 9-Balashanmugam. P.W. 7-Neelamegam's elder brother is P.W. 8-Arjunan. P.W. 7-Neelamegam sold the Hero Jet cycle to P.W. 8-Arjunan, who in turn sold the cycle to one- Saroja. In the Hero Jet cycle two fingerprints were found and in that places, photographs were taken by P.W. 15-S. Chandrasekar and it was sent to get the opinion of the fingerprint expert. P.W. 14-T. Jayasankar, who is a fingerprint expert opined that the fingerprints tallies with the fingerprint of fourth accused viz., Namachivayam.

(vii) The Investigating Officer examined P.W. II-Dr. Sridharan, who treated the Watchman Govindan, who sustained injuries due to the assault made on him by the accused: P.W. 19-Alvar Nagayya was the Jailor. The first accused-Kannaiyan was a life convict and he was permitted to go on parole for 30 days from 5.1.1985 to 5.2.1985, but, after he went on parole, he did not turn up and he - remained absconded. Even on the date of the said occurrence, viz., 12.8.1986,

the first accused was on parole. On 2,3.8.1986, P.W. 18- Rajasekar recorded the statement of Saroja and Ali. On 4.9.1986 at about 2.45 p.m. near Annaikarai P.W.D. Lake Office, accused Nos. 2 to 5 were enquired and they were arrested in the presence of P.W. 10-Samikannu and P.W. 17- Narayanasamy. Accused Nos. 2 to 5 gave confession statements in the presence of the same witnesses. On the basis of the statement given by second accused, the material objects were seized under Exs. P-13 and P-14. The idols were recovered under Exs. P-12 and P-15. Then the Investigating Officer seized the material objects M.O.24, M.O.25 and M.O.26- Brass Kavasam. He also recovered the material objects from fourth accused. From the sixth accused Mariamman Statute, which relates to South Arcot Idol theft case, was recovered.

(viii) P.W. 20-Raghavan, Inspector in his evidence stated that one Murugaiyan, who was the then Inspector of Jayamkondam, also investigated the matter, but, he is no more. P.W. 20-Raghavan, Inspector, has taken up the matter for further investigation and after completing the investigation, the charge-sheet has been filed against accused Nos. 1 to 8 u/s 395, I.P.C.

(ix) The learned Additional District and Sessions Judge, Ariyalur, after following the procedures, framed charge against accused 1 to 8, they pleaded not guilty. After the completion of the evidence on the side of prosecution, the accused 1 to 8 were questioned u/s 313, Code of Criminal Procedure as to the incriminatory circumstances found in the evidence of the prosecution witnesses and the accused 1 to 8 flatly denied them as false. On considering the oral evidence of P. Ws. 1 to 20 and Es. P-1 to P-34, the learned Additional District and Sessions Judge found Appellants/accused Nos. 3, 5 to 8 guilty u/s 395, I.P.C. and insofar as accused Nos. 1,2 and 4 are concerned, since, they died during the pendency of the case before the Sessions Court, the charge against them got abated and the accused Nos. 3,5 to 8 were sentenced to undergo imprisonment as indicated in paragraph No. 1. Against that, the present appeals have been preferred.

3. Accused Nos. 3,6 and 7 filed Crl. A. No. 512 of 2003; fifth accused filed Crl. A. No. 1458 of 2003; and Crl. A. No. 517 of 2003 was filed by the eighth accused. Since, these appeals have arisen out of the one and the same occurrence and it is against the judgment passed by the Additional District and Sessions Judge, Ariyalur, dated 11.3.2003 in S.C. No. 90 of 1988, all the three appeals are disposed of by a common judgment.

4. P.W. 2-Seshadri Pattachariar is a resident of Vikkiramangalam village. He is the Archakar of Varadaraja Perumal Temple at Vikkiramangalam Village. Since, there is no Archakar in Vedanarayana Perumal Temple at Sripuranthan Village, he is performing the duty of Archakar in the said Temple also. He used to perform pooja from 9.00 to 10.30 a.m. After performing the pooja, he used to hand over the key to the guard Govindan. P.W. 3 is the trustee of the temple. P.W. 4-Govindasamy and P.W. 5-Kaliaperumal, were the residents of the Sripuranthan Village. P.W. 1-Devarajan, Village Administrative Officer, on coming to know that the idols were stolen gave a complaint-Ex. P-1. In these cases, accused Nos. 1,2

and 4, were died. Two important witnesses in these cases are the watchmen of the temple, they also died. The prosecution mainly relied on the Hero Jet cycle, which was purchased by P.W. 7- Nelamegam from P.W. 9-Balashanmugam. P.W. 7-Neelamegam's elder brother is P.W. 8-Arjunan. P.W. 7-Neelamegam sold the Hero Jet cycle to P.W. 8-Arjunan, who in turn sold the cycle to one Saroja. A reading of the evidence would show that the witnesses were not able to show that the property was actually sold to Saroja. Since, the title of cycle has not been established, the recovery will not be helpful to the case of prosecution.

5. The watchman Govindan was examined by P.W. 11 -Dr. Sridharna, his evidence is not helpful to the case of prosecution.

6. In the Hero Jet cycle two fingerprints were found and in the places, photographs were taken by P.W. 15-S. Chandrasekar and it was sent to get the opinion of the fingerprint expert. P.W. 14-T. Jayasankar, who is a fingerprint expert opined that the fingerprints tallies with the fingerprint of fourth accused viz., Namachivayam. But, admittedly, the fourth accused is no more and he is dead. Moreover there is also no evidence before the Court to show that the fingerprints compared by P.W. 14 were pertaining to that of the accused 3, 5 to 8. In such circumstances, no relevance can be placed on the fingerprint expert opinion.

7. Insofar as it relates to recovery is concerned, a perusal of the evidence of P.W. 16-Kariappan reveals that he had spoken about the recovery from first accused and other accused. First accused is dead and P.W. 16 is not able to speak about the recovery from other accused. P.W. 7 Neelamegam is an advocate, in his evidence, though he had spoken about the recovery, but, it is unfortunate that he is unable to identify the accused from whom the property has been recovered. Mere recovery alone is not sufficient. In these cases, there is no eye-witness. So, the recovery of material objects from the Appellants/accused 3, 5 to 8 are doubtful and it has not been proved by the prosecution beyond reasonable doubt.

8. The circumstantial evidence is also not in favour of the prosecution. So as narrated above, the prosecution has miserably failed to prove the recovery and also that the fingerprints taken from the place of occurrence is related to that of the Appellants/accused Nos. 3,5 to 8 and so, it is fatal to the case of the prosecution. In such circumstances, I am forced to conclude that the prosecution has failed to prove that the Appellants/accused Nos. 3,5 to 8 have committed the offence u/s 395, I.P.C., beyond reasonable doubt. Hence, the benefit of doubt has to be given in favour of the Appellants herein and therefore, they are entitled for acquittal. The judgment of conviction and sentence passed by the Sessions Court is liable to be set aside and the criminal appeals are liable to be allowed.

9. In fine, -

i. The criminal appeals are allowed.

ii. The Appellants/accused Nos. 3,5, to 8 are exonerated from all the charges

levelled against and they are acquitted.

iii. The judgment of conviction and sentence passed by the Sessions Court are set aside.

iv. The fine amount, if any paid by the Appellants, is ordered to be refunded to the Appellants.

v. Bail bond, if any executed by the Appellants, shall stand cancelled.