

(2016) 04 MAD CK 0037

In the Madras High Court

Case No : Criminal Appeal Nos. 300 of 2008.

Nagaraj, Chinnathambi, Jayashankar-(A5, A7 &9)

APPELLANT

Vs

State by the Inspector of Police, Thiruppathur Town Police
Station, (Special Team Crime Branch), (Natrampalli Police
Station), Vellore District (Crime No. 244 of 2000)

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 395, 457

Citation : (2017) 1 LW(Crl) 694 : (2016) 2 MadWNCri 343 : (2016) 2
MLJCriminal 474

Hon'ble Judges : P. Devadass, J.

Bench : Single Bench

Advocate : E. Kannadasan, Advocate, S. Thiruvengadam, Advocate and T.
Muruganantham, Advocate, for the Appellant; P. Govindarajan Appeals Additional
Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P. Devadass, J. - As these Criminal Appeals are connected on facts and law and are directed against common judgment, they were clubbed together, heard together and are being disposed of by this common judgment.

2. A2 to A9 in the Sessions Case in S.C. No.298 of 2001 on the file of the learned Additional Sessions Judge (Fast Track Court), Tiruppathur, Vellore District are the appellants.

3. After trial, they were convicted and sentenced as under:-

S.No. Accused Conviction Sentence

1. A-5/1st Appellant in

C.A.300 of 2008 (i) Section 457 IPC

(ii) Section 395 IPC (i) 3 years RI

(ii) 7 years RI, fine Rs.2,000/-, i/d 6 months RI

2. A-7/2nd Appellant in

C.A.300 of 2008 (i) -do-

(ii) -do- (i) -do-

(ii) -do-

3. A-9/3 rd Appellant in

C.A.300 of 2008 (i) -do-

(ii) -do- (i) -do-

(ii) -do-

4. A-6/Appellant in

C.A. 318 of 2008 (i) -do-

(ii) -do- (i) -do-

(ii) -do-

5. A-3/1 st Appellant in

C.A.372 of 2008 (i) -do-

(ii) -do- (i) -do-

(ii) -do-

6. A-4/2 nd Appellant in

C.A.372 of 2008 (i) -do-

(ii) -do- (i) -do-

(ii) -do-

7. A-2/Appellant in

C.A.619 of 2008 (i) -do-

(ii) -do- (i) -do-

(ii) -do-

8. A-8/Appellant in

C.A. 622 of 2008 (i) -do-

(ii) -do- (i) -do-

(ii) -do-

The twin sentences upon each accused were directed to run concurrently. Subsequently, A4 also died.

4. The case of the prosecution briefly to be stated as under:-

(i) PW.1 is residing in Sunnambukuttai village near Sithannampalli Joint Road in Tiruppathur Taluk in Vellore District. Her husband is employed abroad. On the night of 21.03.2000, she, her children and her servant maid/PW.2 slept in the house. At about midnight, 9 persons have barged into the house. At knife point, they have robbed PW.1's gold ring (MO.1), Iron Box (MO.2), Sony Colour TV (MO.3), Battery (MO.5), one pair of silver anklets (MO.6), Rs.1,000/- and also took away a bicycle. They have left the house after threatening them.

(ii) On 22.03.2000 at about 10 p.m., at the Natrampalli Police Station PW.1 gave Ex.P-1 complaint to PW.13 S.I of Police. He registered a case in Crime No.244 of 2000 under Section 380 IPC (Ex.P27 - FIR). He took up his investigation. He visited the scene place. Prepared Ex.P2 Observation Mahazar in the presence of PW.3 and one Sahadevan. Drew Ex.P28 rough sketch of the scene place. He examined the witnesses and recorded their statements. altered the Section of Law to Section 395 IPC. He sent Ex.P29 - Express Alteration Report to the Court.

(iii) Thereafter, PW.14 Inspector continued the investigation. On 12.06.2000, at about 4 a.m., near Thamaraimuthur Joint Road, PW.14 had arrested A1, A5, A6 and A7 in the presence of P.Ws. 4 and 5. He recorded the confessional statements in the presence of the said witnesses that if they were taken to certain places, they will show and produce him certain properties. Accordingly, A4 produced MO.4 ? Battery from his house in Pudukottai village. PW.14 seized it under Ex.P30 Seizure Mahazar in the presence of P.Ws. 4 and 5. A6 took them to PW.10 the Pawn Broker's Shop in Jinnah Road, Tiruppathur. PW.10 produced MO.1 gold ring. PW.14 seized it under Ex.P31 Mahazar in the presence of said witness. A5 produced MO.2 iron box from his bouse in Maleachamangalam,

(iv) On 22.6.2000, at about 12.30 Noon, near the Paichal Railway Station Gate, in the presence of PW.11 ? V.A.O and PW.12 - his Assistant, PW-14 arrested A2, A3, A8 and A9 and recorded their confessional statements Exs.P. 15 to 18 that if they were taken to certain places they will show and produce him certain properties.

(v) On 22.6.2000, at about 10.15 p.m, from his house A2 produced MO.3 Sony Colour TV. PW.14 seized it under Ex.P. 33 Mahazar in the presence of P.Ws. 11 and 12. On 23.6.2000 at about 4.45 a.m., from his house A8 produced MO.5 Silver anklets. PW.14 seized it under Ex.P4 Mahazar in the presence of said witnesses. From his house in Palnamkuppam, A3 produced a B.S.A bicycle. PW.14 seized it under a Mahazar. PW.14 produced the accused to the Jurisdictional Magistrate for remand. PW.14 produced the case properties to the Court under Form 95 under Exs.P35 to P39. He also produced the accused for judicial custody.

(vi) PW.14 gave Ex.P11 requisition to the Court to conduct Identification Parade. The Chief Judicial Magistrate, Vellore nominated PW.9 Judicial Magistrate No.III, Vellore to conduct the Identification Parade. On 16.8.2000, at about 2.30 p.m., at the Central Prison, Vellore, PW.9 conducted the Identification Parade. PW.1 identified A2 only.

(vii) PW.14 received Ex.P14 Test Identification Parade Report, perused the entire case - records. Concluding his investigation, he filed the Final Report as against the accused for offences under Sections 457 and 395 IPC before the Jurisdictional Magistrate.

5. The learned Magistrate supplied the accused copies of documents under Section 207 Cr.P.C. The learned Magistrate committed the case to the Sessions Court, Vellore. The learned Principal Sessions Judge, Vellore made over the case to the learned Additional Sessions Judge (Fast Track Court), Tiruppathur.

6. As A1 died, charges against him abated. The trial Court upon hearing both sides and on consideration of the case records, framed charges under Sections 457 and 395 IPC as against the accused A2 to A9. They have pleaded not guilty to the charges.

7. Prosecution examined P.Ws. 1 to 14, marked Exs.P. 1 to P 39 and exhibited M.Os. 1 to 5.

8. When the accused were examined under Section 313 Cr.P.C. on the incriminating aspects in the prosecution evidence, they have denied the offences. They did not let in defence evidence.

9. Appreciating the said evidence and the submissions of both sides, the trial Court convicted and sentenced them as already stated.

10. The learned counsel for the appellants contended that the accused were implicated in this case. The evidence of PW.1 would show that already A2 was shown to PW.1 at the Police Station. Thus at the behest of police, PW.1 had identified A2 at the Test Identification Parade conducted by PW.9.

11. The learned counsel for the appellants further contended that FIR has been registered as against unknown accused. In her complaint, PW.1 had not given any description of A2. In such circumstances, her identifying him at the Identification Parade is unbelievable.

12. The learned counsel for the appellants further contended that Section 27 Evidence Act recoveries pressed into service in this case are farce. The prosecution thoroughly failed to establish the charges framed against the accused beyond all reasonable doubts.

13. The recovery of M.O. 1 gold ring from PW. 10 pawn broker at the instance of A6 stand falsified by PW.10. The recovery witnesses P.Ws. 4 and 5 turned hostile. The recovery of certain other case-properties stated to have been effected by PW.14, the Investigating Officer in the presence of P.Ws. 11 and 12 is a stage

managed show. PW.12 has not supported the said recovery. The evidence of PW.11 ? V.A.O, an obliging witness also not reliable. Further based on the Section 27 Evidence Act recovery alone, recording of conviction is hazardous.

14. The prosecution thoroughly failed to establish the charges levelled against the accused beyond all reasonable doubts.

15. On the other hand, the learned Additional Public Prosecutor would contend that PW.1 is the victim and she has clearly testified before the trial Court as to the robbery committed in her house, she had identified the case properties, and she had also identified A2 before PW.9/Magistrate. Further based on the confession statement of the accused, properties were recovered. PW.11 ? V.A.O spoken to about his witnessing the recording of the confessional statement and also recovery effected by PW.14. In such circumstances, relying on the said evidence, the trial Court has rightly convicted and appropriately punished them.

16. I have anxiously considered the rival submissions, perused trial Court's judgment and the entire materials on record.

17. Now the question is whether the prosecution has established the charges under Sections 457 and 395 IPC as against A2, A3 and A5 to A9 beyond all reasonable doubts.

18. The prosecution version of the case is that the accused have barged into the house of PW.1 at dark night and robbed her valuables at knife point and escaped with their booty. To sustain the charges, prosecution relies on the evidence of PW.1/complainant and also Section 27 of Evidence Act recovery.

19. PW.1 is residing in a house situate in Muthanapalli Joint Road near Natrampalli in Thiruppathur Taluk in Vellore District. Her evidence is that on the night of 21.03.2000, the robbers came to her house, robbed of M.Os.1 to 5 consisting of gold ring, iron box, colour TV, battery and one pair of silver anklet and also a bicycle.

20. PW.9, learned Judicial Magistrate No. III, Vellore conducted Test Identification Parade with PW. 1. PW. 1 identified A2 alone. It is pertinent to note that in her complaint Ex.P1, PW.1 has not given any description of accused including A2. In such circumstances, she had no opportunity to had the countenance of A2. In her evidence she had also admitted that at the police lock-up, A2 was identified to PW.1 So her identifying A2 before PW.9 Magistrate at the Test Identification Parade could not be accepted.

21. According to PW. 14, the Investigating Officer, on 12.06.2000 at about 4 a.m, he has arrested accused A1, A5, A6 and A7 and recorded their confessional statements in the presence of P.Ws. 4 and 5 and effected recovery of M.O.4 ? battery at the instance of A4. P.Ws. 4 and 5 turned hostile. So, recovery of M.O.4 is not established.

22. PW.10 ? pawn broker has stated that A6 had pledged M.O.1 gold ring in their

shop and PW.14 had seized M.O.1 from him. It is pertinent to note that PW.10 had admitted that he has not personally seen A6 pledging M.O.1 in their pawn shop. PW.10 mentions about his brother. Pawn ticket for M.O.1 also has not been produced. PW.10 also admits that he had never seen A6. So recovery of M.O.1 is not established.

23. Now what remains is the balance recovery evidence relating to M.O.2, M.O.3 and M.O.5, iron box, a TV and a pair of silver anklet. PW.11 ? V.A.O spoken about recovery of those items based on the confessional statements of A2, A3, A8 and A9. PW.14 ? Inspector spoken about his effecting recovery of the said case properties in the presence of P.Ws. 11 and 12. PW.12 Village Assistant to PW.11 did not support the prosecution version of Section 27 Evidence Act recovery of the said case properties. Further, there is contradiction as to the arrest of these accused and recovery of the case properties whether it was at the Pachal Railway Station or in the office of the Deputy Superintendent of Police. The cross examination of PW.11 revealed that he had acted as recovery witness in certain other property offence cases registered by the police. He seems to be an obliging witness of the police. Thus this recovery is also not established.

24. Now analysing the evidence on record, we hold that the prosecution has not established the charges beyond all reasonable doubts.

25. In view of the foregoings, these appeals are allowed. The conviction recorded and sentence awarded under Section 457 and 395 IPC are set aside. The accused are acquitted. Fine amount, if any, paid shall be refunded to them.