

Suryamoorthi and Another

Vs

Govindaswamy and Others

Criminal Appeal No. 192 of 1977

(S. Natarajan, A. M. Ahmadi JJ)

13.04.1989

JUDGMENT

AHMADI, J. –

1. This appeal by PW 1 Suryamoorthi and his mother PW 2 Pappammal is directed against the judgment of the High Court of Madras which confirmed the order of acquittal passed by the learned Additional Assistant Sessions Judge, Thanjavur. PWs 1 and 2 reside in village Sivakollai, a hamlet of Nambivayal. On February 18, 1972, PWs 1 and 2 left for Madras with Rs. 73,600 in cash wrapped in a towel tied around the waist of PW 2. They went to consult PW 22 Sundarammal as they desired to purchase a property in Madras. They reached Madras on the morning of February 19, 1972. They informed PW 22 that they were desirous of purchasing a house in Madras but PW 22 advised them to invest the amount in agricultural land in their village. Accepting her advise PWs 1 and 2 left Madras on the night of February 19, 1972 by a State Transport Express bus which reached Thanjavur at about 4.15 a.m. on the next day i.e. February 20, 1972. Since they had to change the bus at Thanjavur, PWs 1 and 2 alighted from the State Transport bust and proceeded towards the municipal bus stand to take the bus to Pattukottai. When they were about to board the other bus, original accused 1 to 3 all police constables in uniform, came there and asked them to get down and accompany them to the police station alleging that they were carrying unaccounted money. PWs 1 and 2 therefore got down from the bus. Accused 4 to 7 were also noticed near about the State Transport bus stand. Accused 7 who also hailed from village Sivakollai was found covering his head with a towel. PWs 2 and 2 were taken to the East Mian Street with accused 4 to 6 following them. After having walked a short distance, accused 2 asked PW 2 to take out the money which she had secured in the towel tied around her waist. PW 2 took out seven bundles of notes of the denomination of Rs. 100 and gave them to accused 4 who passed them on to accused 2. Accused 2 put the notes in a bag hung on the handlebar of his cycle. On PW 2 remonstrating, accused 2, 5 and 6 stated that they could share the money and thereupon accused 4 retained four bundles in the handbag and returned three bundles to PW 2. PWs 1 and 2 thereafter returned to the bus stand and on reaching their village PW 1 informed his uncle Thangaraj about the occurrence. The latter sent one Irudayaraj, a teacher, to assist PW 1. PW 1 and Irudayaraj came to Thanjavur and contacted accused 1 and 2 with a view to persuading them to return the cash. As they failed to get back the money, PW 1 lodged a complaint next morning. PW 23, Inspector of Police, Thanjavur West, registered an office and undertook investigation. Accused 1 to 6 were arrested on February 21, 1972. In the course of investigation accused 1 made a confessional statement on the basis of which Rs. 14,900 were found from a wooden box hidden by him. Accused 4 also made a similar statement on the basis of which Rs. 4970 came to be found from his house. Accused 5 and 6 also made statements which led to the discovery of clothes and shoes alleged to have been purchased from the monies received by them. Accused 7 was arrested on the next day i.e. February 22, 1972 at about 3

a.m. on the basis of the statement made by him sum of Rs. 19,300 was found from a suitcase kept by him in Tutorial College at Pattukottai. Thus a total sum of Rs. 39,170 came to be recovered in cash from accused 1, 4 and 7, besides the clothes and shoes purchased by accused 5 and 6. The Investigation Officer also attached a sum of Rs. 33,600 from the residence of PWs 1 and 2. A test identification parade was held at which PW 1 identified all the seven accused whereas PW 2 identified accused 2, 6 and 7. A second identification was held on March 1, 1972 at which PW 6 identified accused 7 alone. After completing the investigation PW 23 charge-sheeted all the second accused (respondents 1 to 7 herein).

2. The trial court framed a charge under Section 395 IPC, against all the seven accused persons. In addition a charge under Section 220 IPC was framed against the three police constables, accused 1, 2 and 3. All the seven accused pleaded not guilty to the charge framed against them and claimed to be tried.

3. Accused 1 in his statement recorded under Section 342 of the Criminal Procedure Code, 1898 admitted the find of Rs. 14,900 but stated that the said amount was part of Rs. 15,000 which he had received under an agreement for the sale of land belonging to himself and his wife to one Natarajan. He stated that he had spent Rs. 100 therefrom and the balance of Rs. 14,900 was lying in his house which was attached by the Investigation Officer. Accused 4 stated that he had a sum of Rs. 470 with him and a further sum of 4500 was given to him by his uncle making a total of Rs. 4970 which came to be attached by the police. Accused 7, while denying the fact that he had made a confessional statement, stated that he had saved the amount of Rs. 19,300 as he wanted to purchase a taxi-car. He stated that he had kept the money in the hostel room of the college as an ex-student. Accused 5 alleged that he had been stabbed some time back and had lodged a complaint that behalf. The Investigating Officer PW 23 was pressuring him to compound the case but as he refused to do so he was falsely implicated in the present case. His further say was that he had purchased the clothes and shoes from Rs. 400 given to him by his brother. Accused 6 stated that he was falsely implicated. So far as the test identification is concerned, the accused contend that it was a mere farce since the photographs of the accused had appeared in the local dailies of December 23 and 24, 1972 and they were also shown to the witnesses while in police custody before the actual identification parade was held.

4. The prosecution case rested mainly on the evidence of three witnesses, namely, PW 1, PW 2 and PW 23. On a consideration of the evidence of these three witnesses and in the light of the facts emerging from the evidence of the other prosecution witnesses, both the courts below came to the conclusion that the prosecution version that PWs 1 and 2 had a large sum of Rs. 73,600 on February 18, 1972 and that they had left their village with Rs. 73,600 in cash to consult PW 22 was not believable. Note was also taken of the fact that PW 1 had shown his annual income at Rs. 460 to gain admission to the hostel. PW 1 had been candid in admitting that such a statement was made to secure admission to the hostel to carry on his studies. Both the courts therefore took the view that it was not possible to believe that PW 2 had saved such a substantial amount of Rs. 73,600 from their meagre earnings as agriculturists. The receipt of Rs. 6000 as 'moi' by PW 2 on the demise of her father-in-law was also doubted. The say of PW 2 that her husband who was serving in Malaysia used to bring jewels and valuables whenever he visited India was also disbelieved. Both the courts below therefore took the view that PW 1 and PW 2 who were living in a thatched house could not possess a substantial amount of Rs. 73,600 on the date of the incident and therefore the entire prosecution version was incredible. As far as the identification parades are concerned both the courts accepted the defence plea that they were a mere farce firstly because the photographs of the accused had appeared in the newspapers before the identification parades were held and secondly

because the possibility of the accused having been shown to the witnesses before the parades could not be ruled out. On this line of reasoning the accused came to be acquitted by both the courts. The original complainants, PWs 1 and 2 have therefore come in appeal by special leave.

5. It is indeed true that PWs 1 and 2 were poor persons who lived in 10 x 10 thatched house and earned their living by cultivating their own land and working as agricultural labourers during spare time on a wage of Rs. 2 per diem. Merely because they did not produce the patta or other title deeds in respect of their land which they were not called upon to produce, there was no justification for rejecting their evidence that they possessed 5 acres of wet land and 2 acres of dry land in the village. PW 2 deposed that during the last 10 years her husband had come from Malaysia twice and each time he brought some sovereigns and other valuables for the family. It was not disputed that her husband had gone to Malaysia for earning a living. Naturally he would bring his savings to India in the form of sovereigns or other valuables. We also see no good reason for the courts below to disbelieve PW 2 on the point that she received a sum of Rs. 6000 as 'moi' from friends and relatives at the time of the death of her father-in-law. One cannot expect a person like PW 2 to maintain accounts of the small sums received by her from friends and relatives as 'moi'. Both the courts below while coming to the conclusion that PW 2 could not have saved an amount of Rs. 73,600 overlooked the fact that a substantial sum of Rs. 33,600 was in fact recovered by the police from her residence on February 21, 1972. If she could possess a sum of Rs. 33,600, there is no reason to doubt her statement that over a period of 10 years she had collected an amount of Rs. 73,600 by way of savings. An Indian housewife's habit of thrift is well known and hence it is not surprising if she had set apart some money for the evening of life. The courts below also failed to realise that there was no reason for PWs 1 and 2 to file an imaginary complaint against the accused including policemen if they had in fact not been deprived of their hardearned money. The evidence of PW 1 also shows that PW 2 had not disclosed to him also that she had saved a substantial amount of Rs. 73,600 till the morning of February 18, 1972 when they left for Madras. This shows that PW 2 had kept it a secret even from her son PW 1 that she had savings of Rs. 73,600 wherefrom she was desirous of purchasing a property in Madras. We find it difficult to comprehend why these two simple villagers should concoct a story involving seven persons including policemen if in fact they did not possess and were not stripped of their cash at Thanjavur. These two factors, namely, the find of Rs. 33,600 from the house of PWs 1 and 2 by the police immediately after the complaint was lodged and the fact that there was no earthly reason for them to lodge a false complaint against accused 1 to 7 have been totally overlooked by both the courts below. If the prosecution evidence is appreciated in the above backdrop it becomes clear that the courts below fell into an error in proceeding on the premise that since PWs 1 and 2 had not accounted for the savings made over a period of 10 years, their story that PW 2 had Rs. 73,600 on the date of the incident is incredible. In fact the find of Rs. 33,600 from the residence of PWs 1 and 2 supports the prosecution version that PWs 1 and 2 returned to their village with Rs. 33,600 after being stripped of Rs. 40,000.

6. Immediately on their return to the village PW 1 contacted his uncle Thangaraj for help. The latter asked the local teacher Irudayaraj to help PW 1. PW 1 and Irudayaraj went to Thanjavur and tried to persuade accused 1 and 2 to return the money, but in vain. The non-examination of Thangaraj and Irudayaraj cannot discredit PW 1 in this behalf. In fact there is no cross-examination on the point that PW 1 and Irudayaraj had approached the two policemen to get back the money. It was only after this effort failed that PW 1 decided to lodge a complaint against the two policemen, whose numbers he had noted at the time of the incident, and their accomplices. In the complaint Ex. P-1 the numbers of accused 1 and 2 and the names of accused 5 to 7 have been mentioned. Besides accused 7 was no stranger to PWs 1 and 2 as he belongs to their village and lives a couple of houses away. So also accused 4 was known to PW 1 by name Ganpathy. In the complaint Ex. P-1 he has,

however, given the name Ganesh. This seems to be a mere slip since Ganpathy is also known by the name Ganesh. It will thus be seen that only after the effort of PW 1 and Irudayaraj to get back the money failed that PW 1 decided to file the complaint. The delay in lodging the complaint has therefore been properly explained.

7. Immediately after the complaint was lodged by PW 1 with Police Inspector Appaswami, PW 23, at 9 a.m., the latter registered an offence and proceeded to the police lines by about 9.45 a.m. He arrested accused 1 and interrogated him. In the course of interrogation accused 1 expressed his willingness to disclose the place where he had hidden apart of the loot. He pointed out a wooden box containing a false bottom. On unscrewing the false bottom three bundles of currency notes of the denomination of Rs. 100 were found. In all 149 notes valued at Rs. 14,900 were found and attached under a seizure memo. On the same day accused was arrested at about 11.05 a.m. but on search nothing incriminating was found from his residence. So also the house of accused 3 was searched immediately after his arrest at about 11.30 a.m. but nothing incriminating was found. The Investigating Officer left accused 1 to 3 in the lock-up and proceeded to Orathanad in the company of PW 8. He went to the residence of accused 4, arrested him and searched his house. On search some currency notes rolled in a mat were found totalling Rs. 4970 and the same were attached under Ex. P-4. After returning to the police station and lodging accused 4 in the lock-up the Investigating Officer went in search of accused 5 and 6. He went to their rooms at about 4 p.m., arrested them and searched their rooms but nothing incriminating was found. In the course of investigation accused 5 and 6 made statements on the basis of which the Investigating Officer visited a few places and attached certain articles. After returning to the police station he went to village Sivakollai where he recorded the statement of PW 2 at about 1 a.m. He also attached the balance of amount of Rs. 33,600 under Ex. P-25. Thereafter, he went in search of accused 7 and arrested him at about 3 a.m. Accused 7 made a confessional statement in the course of investigation on the basis of which the Investigating Officer proceeded to the Tutorial College, Pattukottai, along with witnesses and recovered Rs. 19,300 in hundred rupee currency notes wrapped in a handkerchief. He then returned to the police station and after obtaining a remand sent a requisition for holding an identification parade. It will thus be seen from the above evidence that currency notes totalling Rs. 39,170 were recovered in the course of investigation from accused 1, 4 and 7. Some articles alleged to have been purchased by accused 5 and 6 from the loot money were also recovered from different places at the instance of the said accused persons but having regard to the nature of the articles and their value we do not think we would be justified in attaching importance to their find. However, so far as the find of Rs. 39,170 is concerned, it must be conceded that it lends considerable support to the evidence of PWs 1 and 2 that they were deprived of Rs. 40,000 at Thanjavur. Accused 1 has in the course of his statement recorded under Section 342 of the Code of Criminal Procedure stated that he had entered into an agreement for the sale of lands belonging to him and his wife for Rs. 15,000 with one Natarajan and the sum of Rs. 14,900 found from his house was a part of that money. It may also be mentioned that soon after his arrest Natarajan filed a C.M.P. No. 233 of 1972 but the outcome of that application is not known. Unfortunately, the Investigating Officer did not examine the contents off that application nor did he make a mention thereof in the case diary. However, the fact remains that Rs. 14,900 were recovered from the house of accused 1 which amount was secreted in a wooden box having a false bottom. We fail to understand why accused 1, a police constable, should hide the currency notes in this manner if he had received the amount from Natarajan under a valid agreement. If the amount of Rs. 14,900 was received by him under an agreement for sale of land it is difficult to believe that a policeman would secrete the same in this manner rather than place the same in his bank account. The manner in which the amount was secreted betrays a guilty mind. We are, therefore, not inclined to accept the defence version that accused 1 had received an amount of

Rs. 15,000 from Natarajan under an agreement to sell land belonging to him and his wife.

8. Accused 4 stated that he had saved a sum of Rs. 470 and his uncle had given him a further sum of Rs. 4500 thus making a total of Rs. 4970 which came to be seized by the Investigating Officer PW 23 from his residence. Except his bald statement there is no evidence in support of this version. So far as accused 7 is concerned, his defence is that he had saved the amount of Rs. 19,300 as he wanted to purchase a taxi and had kept the same in the hostel of the Tutorial College of which he was an ex-student. Here again except his bare statement there is no other evidence on record to support it. The fact that these sums were attached on the basis of statements made by accused 1, 4 and 7 is not in dispute. In fact accused 1, 4 and 7 claim the amounts to be their own. The find of these amounts has to be evaluated in the light of the statements these three accused persons made to the Investigating Officer in the presence of witnesses in the course of investigation. Having regard to the evidence of PWs 1 and 2, the statements of accused 1, 4 and 7 in the course of investigation leading to the find of the said amounts, we are of the opinion that the prosecution version stands corroborated. The plea that the identity of the currency notes found must tally with the stolen notes before a conviction can be recorded must only be stated to be rejected.

9. So far as accused 2, 3, 5 and 6 are concerned as there is no corroborative evidence showing their involvement and as the evidence regarding their identity is not dependable, we think they are entitled to the benefit of doubt. Hence the order of acquittal passed by the courts below insofar as they are concerned deserves to be confirmed.

10. Two identification parades were held in the course of investigation. At the first identification parade PW 1 identified all the seven accused persons whereas PW 2 identified three of them, namely, accused 2, 6 and 7 alone. It is, however, in evidence that before the identification parades were held the photographs of the accused persons had appeared in the local daily newspapers. Besides, the accused persons were in the lock-up for few days before the identification parades were held and therefore the possibility of their having been shown to the witnesses cannot be ruled out altogether. We do not, therefore, attach much importance to the identification made at the identification parades. However, it must be realised that the number of accused 1 was mentioned in the complaint Ex. P-1 and accused 4 and 7 were already known to PW 1. The find of money from these three accused persons lends corroboration to the evidence of PWs 1 and 2. We do not convict the other accused not because we doubt the evidence of PWs 1 and 2 but because we adopt a cautious approach and look for corroboration having regard to the facts and circumstances of this case.

11. The learned counsel for the accused submitted that we should not disturb the concurrent findings of fact recorded by both the courts. We are conscious of the fact that ordinarily this Court exercising jurisdiction under Article 136 of the Constitution is slow in substituting its findings of fact in place of those recorded by the courts below. However, this does not mean that this Court has no power to do so. The discretion conferred by Article 136 of the Constitution is wide enough to permit this Court to interfere even on facts in suitable cases if the approach of the courts below has resulted in grave miscarriage of justice. By way of self-imposed discipline, the Court does not ordinarily reappreciate or reassess the evidence unless it is of opinion that the approach of the courts below has resulted in failure of justice necessitating correction. If the courts below have misread the evidence or have ignored vital pieces of evidence resulting in miscarriage of justice it becomes the duty of this Court to interfere in the interest of administration of justice. In our view, the present is one such case which calls for interference. The approach of the courts below in doubting the capacity of PWs 1 and 2 to possess Rs. 73,600 and requiring them to prove how PW 2 had over a period of 10 years

saved the said amount notwithstanding the find of Rs. 33,600, was wrong and resulted in an erroneous conclusion.

12. The accused were charged under Section 395 IPC. However, as we have confirmed the acquittal of accused 2, 3, 5 and 6 and are convicting accused 1, 4 and 7 only we think the conviction can properly be under Section 392 IPC. We, therefore, set aside the order of acquittal and convict accused 1, 4 and 7 under Section 392 IPC.

13. Accused I was also charged under Section 220 IPC. In order to bring home the charge under the said provision it must be shown that accused 1 held an office which empowered him to commit any person for trial or to confinement or to keep such person in confinement. It must next be shown that the accused corruptly or maliciously committed such person for trial or to confinement or kept him in confinement in exercise of that authority knowing that in so doing he was acting contrary to law. The facts in the present case do not show that accused 1 had at any time kept PW 1 or PW 2 in confinement. PWs 1 and 2 were made to alight from the bus and were taken to the nearby street. At best it would amount to wrongful restraint but not wrongful confinement. We are, therefore, of the opinion that the charge under Section 220 IPC is not proved.

14. Since we are convicting accused 1, 4 and 7 for the first time in this Court we would like to give them an opportunity of being heard on the question of sentence as required by Section 235(2) of the CrPC. The case will be put up before us after 10 days for hearing the accused on the question of sentence. The acquittal of the rest of the accused 2, 3, 5 and 6, is however, confirmed. The sums recovered from the possession of the convicted accused will be made over to PW 2. As regards the amount of Rs. 33,600 recovered from PW 2, since the High Court has already given appropriate directions, we need not make further orders.

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