

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2016

PRONOUNCED ON : 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C.No.240 of 2011

1. Asokan

2. Balaji

.... Petitioners/Accused Nos.3 & 4

vs.

The State,by
The Inspector of Police,
(Edappadi Police Station),
Poolampatti Police Station,
Crime No.139 of 2006,
Salem District

.... Respondent/complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C., against the judgement dated 24.11.2010 made in C.A.No.26 of 2009 on the file of the I Additional Sessions Court, Salem, confirming the judgment dated 28.01.2009 made in C.C.No.95 of 2007 on the file of the Judicial Magistrate No.1, Sankari.

For Petitioner : Mr.N.Manokaran

For Respondent : Mrs.M.F.Shabana

Government Advocate(Cr1. Side)

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ORDER

A1 to A3 in C.C.No.95 of 2007, on the file of the learned Judicial Magistrate, No.I, Sangagiri are the petitioners herein. Totally there are four accused. All the accused stood charged for an offence under Section 392 IPC. By judgment dated 28.01.2009, the trial court, convicted A1 and A2 under Section 392 r/w. 75 IPC and sentenced him to undergo rigorous imprisonment for 3 years and also imposed a fine of

Rs.3000/- in default to undergo simple imprisonment for 6 months and convicted A3 and A4 under Section 392 IPC and sentenced him to undergo rigorous imprisonment for 3 years and also imposed a fine of Rs.3000/- in default to undergo simple imprisonment for 6 months. Challenging the above said conviction and sentence, the petitioners/A3 & A4, filed an appeal in C.A.No.26 of 2009 on the file of the I Additional Sessions Judge, Salem. The lower appellate court dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court. Challenging the above said conviction and sentence, the petitioners/A3 & A4 are before this Court with this Revision Petition.

2. The case of the prosecution in brief is as follows:

P.Ws.1 to 5, are residing at Vellerivelli village in Poolampatti. P.W.2 is the wife, P.W.3 is the daughter, P.W.4 is the son and P.W.5 is the mother of P.W.1. On 30.06.2006, at about 12.00 p.m., while all the above witnesses were sleeping inside their house, the accused broke open the door, went inside the house and tied P.W.1's hand. Thereafter, they have taken the key of the almirah and stolen gold jewells and cash and also stolen the mobile phone of P.W.1. Thereafter, they locked them in a room and they have taken the motor cycle of P.W.1 and flew away. After that P.W.1 managed to open the door and informed the neighbour, by name, Ganesan, and they went to the respondent police station and lodged a complaint, Ex.P.1.

3. P.W.9, Sub-Inspector of Police, in the respondent police, on receipt of the complaint, registered a case in Crime No.139 of 2006 for an offence under Section 392 IPC, and prepared First Information Report, Ex.P.18. P.W.10, Inspector of Police, in the respondent police station, after receipt of the First Information Report, commenced investigation, he proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.2 and drew Rough Sketch, Ex.P.19 in the presence of witnesses. He also engaged a sniffer dog and handwriting experts to assist the investigation. On the same day, at about 5.00 p.m., he recovered the motorcycle belonging to the petitioner near a channel and also 3 handles of the spade in the same place in the presence of witnesses.

4. On 28.03.2007, P.W.10 arrested A1 and A3, at Chettimangurichi bus-stop. On such arrest, they have given a voluntary confession and based on the disclosure statement of A1, he recovered gold chain, cellphone. And based on the disclosure statement of A3, he recovered a gold bangles from his house. Then, A1 identified A2 and A4. On 28.03.2007, at about 12.45 p.m., P.W.10 arrested the A2 and A4 and on such arrest, they have also given a voluntary confession and based on the disclosure statement of A4, a chain has been recovered and based

on the disclosure statement of A3, some other gold jewels have been recovered. Thereafter, on 10.04.2007, a test identification parade was conducted, in which, P.W.1 and P.W.2 have clearly identified all the four accused. Then, P.W.10 recorded the statement of other witnesses. After completing the investigation, he laid charge sheet.

5. Based on the above materials, the trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 10 witnesses were examined and 19 documents were exhibited, besides 13 material objects.

6. Out of the witnesses examined, P.W.1 is the complainant, in this case. According to him, on the date of occurrence, while he along with other family members, namely, P.W.2 to P.W.5, were sleeping in their house, in the mid-night, at about 12.00 p.m., all the accused had broke open the door and entered into the house and tied the hand of P.W.1. Then, the accused have taken the key of the Almirah and stolen all the gold jewells and cash and also taken the motorcycle belonging to P.W.1 and ran away.

7. P.W.2 is the wife of P.W.1, and she also reiterated the evidence of P.W.1. Both P.W.1 and P.W.2 have subsequently identified the jewells, which have been recovered from the accused and they have also identified the accused in the test identification parade conducted by the Judicial Magistrate. P.W.3 is the daughter, P.W.4 is the son and P.W.5 is the mother of P.W.1. All of them are eye-witnesses to the occurrence and they are also present in the house at the time of occurrence. According to them, after stolen the properties, the accused locked all the witnesses into a room and bolted it from outside and ran away. Then, P.W.1, came out of the room and informed the neighbour, thereafter, he has given the complaint.

8. P.W.6 is the sister's son of P.W.1 and after receiving the phone message, he searched for the accused. P.W.7 is the witness to the Observation Mahazar and arrest of the accused and also for recovery of the material objects based on the disclosure statement of the accused. P.W.8, Judicial Magistrate, No.I, Sangagiri, has spoken about the test identification parade conducted by him. P.W.9 is the Sub-Inspector of Police, who registered the complaint. P.W.10, Inspector of Police, has conducted investigation, arrested the accused and recovered the material objects and after completion of investigation, he laid the charge sheet against the accused.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not chose to examine any witness or

mark any documents.

10. Having considered all the above, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the said conviction and sentence, A3 and A4 filed an appeal in C.A.No.26/2009 on the file of the I Additional Sessions Judge, Salem and the lower appellate court also confirmed the conviction and sentence imposed on them and thereby dismissed the appeal. Challenging the same, the present revision has been filed.

11. Heard Mr. N.Manokaran, learned counsel for the petitioners and Mrs.M.F.Shabana, learned Government Advocate (Crl. Side) appearing for the respondent.

12. P.Ws.1 to 5, are eye-witnesses to the occurrence. According to P.W.1, on the date of occurrence, at about 12.00 p.m., in the mid night, accused came inside the house holding handle of spade in their hand and they tied the hands of P.W.1. Thereafter, the accused forcibly took the key of the almirah and stolen the gold jewells and cash and also the mobile phone belonging to P.W.1 and they also removed the mangalsutra along with chain worn by P.W.2. Thereafter, the accused locked P.Ws.1 to 5 in a room and then ray away. Thereafter, P.W.1 has given a complaint.

13. P.W.10, the Investigating officer, have arrested A1 and A3 and based on the disclosure statement, he recovered the stolen gold jewells and cellphone. Based on their disclosure statement, A2 and A4 were arrested and based on the disclosure statements of A2 and A4 other stolen articles have been recovered by P.W.10 in the presence of witnesses. Subsequently, all the stolen properties had been identified by P.Ws.1 and 2. Then, test identification parade has also been conducted by P.W.8, in which, P.Ws.1 and 2 have clearly identified all the four accused. The stolen properties have been recovered from the accused, but there is no proper explanation from the accused for the possession of the stolen property, hence the presumption under Section 114(a) of the Evidence Act arises as there is no explanation on the side of the petitioners regarding their possession of the stolen property. Considering all the materials, both the courts below convicted all the accused.

14. The scope of revision under Section 397 Cr.P.C is very very limited. The Supreme Court in a judgment reported in 2012 (9) Supreme Court Cases 460 considering the scope of revision under Section 397 Cr.P.C has held as follows :

" Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of

satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits. "

15. In the instant case, the Courts-below after elaborately considering the evidences in proper perspective, came to a conclusion that the petitioner/accused has committed the offence and convicted them and I find no illegality or irregularity or perversity in the order passed by the courts-below, and this Court is of the opinion that the prosecution has proved the guilt of the accused beyond all reasonable doubt, and there is no merit in the revision. Hence, the revision case deserves to be dismissed.

16. Accordingly, the Criminal Revision Case is dismissed and the conviction and sentenced imposed by the Courts-below is confirmed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mrp

To

1.The Ist Additional Sessions Judge,
Salem

2.The Judicial Magistrate No.I Sankari

3.The Inspector of Police,
Edappadi Police Station,
Poolampatti Police Station
Salem District

4.The Public Prosecutor,
High Court,
Madras.

+1 cc to Mr.N.Manokaran Advocate sr 3125

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