

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Revision No.997 of 2016

and

Crl.M.P.No.8015 of 2016

Selvam @ Mondi Selvam ... Petitioner/Appellant

Vs

The Inspector of Police,
Mohanur Police Station,
Namakkal District. ... Respondent/Complainant

Prayer :-

This Criminal revision is filed under Section 397 and 401 of Cr.P.C., to set aside the conviction and sentence dated 11.04.2016 made in C.A.No.46 of 2014 on the file of the Principal Sessions Judge, Namakkal, confirming the order passed in C.C.No.135 of 2013 dated 25.06.2014 by the learned Judicial Magistrate No.2, Namakkal.

For petitioner : Mr.K.A.Mariappan

For respondent : Mr.R.Ravichandran,
Government Advocate (Crl.side)

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O R D E R

The petitioner is the sole accused in C.C.No.135 of 2013 on the file of the Judicial Magistrate No.II, Namakkal. He stood charged for an offence under Section 454 and 380 IPC. The trial court, by judgment 25.06.2014 convicted the petitioner for the offence under Section 380 IPC and sentenced him to undergo simple imprisonment for 2 years and to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for 3 months and he

was acquitted for the offence under Section 454 Cr.P.C. Challenging the same, he filed an appeal in C.A.No.46 of 2014 on the file of the Principal Sessions Court, Namakkal and the lower appellate court confirmed the conviction and sentence and dismissed the appeal by judgment dated 11.04.2016. Aggrieved by the same, the present revision petition has been filed.

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

P.W.1 is an agricultural labour, residing at Rettiyampettai village in Namakkal Taluk. On 08.08.2013, at about 7.00 p.m., when he returned to his house after completion of his agricultural work, he found his house broke open and 7 sovereigns of gold chain and another 7 sovereign of Thali chain along with silver waist (araizhan) chain were found missing. Then complaint was lodged on 09.08.2013 at about 9.00 a.m. before the respondent police.

3. P.W.8, Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.335 of 2017 for the offences under Sections 454 and 380 IPC and prepared the First Information Report, Ex.P.7, then he commenced investigation and proceeded to the scene of occurrence, prepared an Observation Mahazar, Ex.P.2 and drew Rough Sketch, Ex.P.8 in the presence of the witnesses. Thereafter, he recorded the statement of the witnesses. Subsequently, on 14.08.2013, at about 9.30 a.m., while he was on the vehicle inspection, the petitioner/accused came in a motorcycle and when he enquired him, he admitted his guilt. Then, P.W.8 arrested the petitioner/accused and on such arrest, he has voluntarily given a confession. Based on the disclosure statement of the petitioner/accused, P.W.8 recovered the stolen articles in the presence of P.W.6 and 7, Village Administrative Officer and Village Assistant. Then, he recorded the statement of the other witnesses and after completion of investigation, he laid the charge sheet.

4. Considering the above material, the trial court framed charges for the offences under Sections 454 and 380 IPC and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 8 witnesses were examined and 11 documents were exhibited, besides one material object was marked.

5. Out of the witnesses examined, P.W.1 is the defacto complainant in this case. According to him, on the date of occurrence, he went out of his house for agricultural work and his wife also was not available in the house. When they returned back, they found the house broke open and also the gold chain, ring and other articles were found missing, then he

lodged a complaint. P.W.2 is the wife of P.W.1. She has also spoken about the missing of the articles from her house. P.W.3 is the married daughter of P.W.1. After hearing the news, she came to her parental home on the date of occurrence and on the next day, she had written the complaint as stated by P.W1 and P.W.1 lodged the complaint.

6. P.Ws.4 and 5 are witnesses to the observation mahazar. P.W.6 is the Village Administrative Officer. He is a witness to the confession of the accused and also for recovery of the stolen articles. According to him, at about 10.00 a.m., the respondent police, called him to N.Pudupati bus stand, he, along with P.W.7, Village Assistant went there. At that time, the accused was there and he has voluntarily given a confession and he had attested the same. Subsequently, based on the confession, police recovered the stolen articles under the cover of Mahazar, Ex.P.4, and he has also attested the same. P.W.7, Village Assistant, who accompanied P.W.6 is also a witness to the confession of the accused and also for seizure mahazar. But in the cross examination, he has stated that both P.Ws.6 and 7 went to the police station at about 1.00 p.m., where the police obtained their signature in a printed form and they put signature in the police station. P.W.8, the Inspector of Police, is the investigating officer, arrested the accused and recovered the stolen article and after completion of investigation, he laid charge sheet.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness or mark any documents.

8. Having considered all the above materials, the trial court convicted the accused as mentioned in paragraph 1 of the judgment. Aggrieved against which, he filed an appeal in C.A.No.46 of 2014 on the file of the Principal District Court, Namakkal and the lower appellate court dismissed the appeal and confirmed the conviction and sentence passed by the trial court. Now, challenging the same, the present revision has been filed.

9. The learned counsel appearing for the petitioner would submit that there is no eye-witness to the occurrence and both the court below convicted the accused based on the recovery and convicting the accused based on the recovery is highly unsafe. There is contradiction in the evidence of P.Ws.6 and 7, who are witnesses to the confession of the accused and also for recovery of the stolen article, and the evidence of P.W.8, Investigating officer. In view of the contradiction in their evidence, it is highly unsafe to convict the accused based on the recovery alone and hence he sought for acquittal.

10. The learned Government Advocate (Crl. Side) would submit that the prosecution has proved the recovery by examining P.Ws.6 and 7 and the stolen articles were also identified by P.Ws.1 and 2 and the stolen articles were in possession of the accused, there is a presumption under Section 114(a) of the Evidence Act, since there is no explanation for the above said possession, the court below rightly convicted the accused and there is no reason to interfere with the order passed by the courts below.

11. I have considered the rival submissions and perused the materials available on record, carefully.

12. The trial court convicted the accused mainly based on the recovery of the stolen article from the petitioner/accused. According to P.W.8, Inspector of Police, while he was on the vehicle inspection on 14.08.2013 at about 9.30 a.m., the accused came in a motorcycle and when he enquired him, the accused had voluntarily admitted his guilt and based on that the accused was arrested and on such arrest, he has voluntarily given a confession in the presence of P.W.6 and P.W.7. Based on the disclosure statement of the accused, the stolen articles were recovered.

13. P.W.6 has deposed that at about 10.00 a.m., P.W.8, called him to N.Pudupatti bus stand and immediately both P.Ws.6 and 7 went there and at that time, the accused had given a confession statement and he attested the confession and P.W.7 also attested it. Subsequently, based on the disclosure statement, the police recovered the jewels near Valaiyapatti and the accused handed over the stolen articles. P.W.7, Village Assistant had deposed that he is also an attester to Ex.P.5 and Ex.P.6. He has stated that both P.W.6 and 7 went to the police station at about 1.00 p.m., and in the police station they have put their signature and then he returned back to their office.

14. P.W.8, Investigating officer, in his cross examination has stated that based on the confession of the accused, he recovered the stolen jewels near (Vailayappati) Trichy-Namakkal main road, in a bush, near the bridge. Hence, regarding the recovery, there are serious contradictions in the evidence of P.Ws.6, 7 and 8. In view of the above contradictions, the recovery of jewels cannot be believed. As already stated except the recovery, there is no other evidence available to prove the guilt of the accused, and in view of the above, it is highly unsafe to convict the accused based on the recovery of stolen article from the accused.

15. In the above circumstances, the judgment of the court below is liable to be interfered, as the prosecution has failed to prove the case beyond reasonable doubt and the petitioner is entitled for acquittal.

16. In the result, the Criminal Revision is allowed and the conviction and sentence imposed on the petitioner/accused by the courts below are set aside and the petitioner/accused is acquitted of the charges. Fine amount, if any, paid by the petitioner, shall be refunded to them. Bail bonds, if any, executed by the petitioner shall stand discharged. Consequently, connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Namakkal.
2. The Judicial Magistrate No.II,
Namakkal.
3. The Chief Judicial Magistrate,
Namakkal
4. The Inspector of Police
Mohanur Police Station, Namakkal
5. The public Prosecutor,
High Court, Madras.
6. The Superintendent,
Central Prison, Salem.

Cr1.R.C.No.997 of 2016

MG(CO)

RRI 12/04/2017

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