

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1055 of 2018
and
CRL.MP.No.12328 of 2018

Silambarasan

.. Petitioner

Vs.

State by
The Inspector of Police,
Thiruvannamalai Town Police State
Thiruvannamalai District.
Crime No.1513/2011

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the order dated 31.07.2018 made in Crl.A.No.2 of 2014 on the file of the learned Additional District Sessions Judge, Thiruvannamalai, Thiruvannamalai District, confirming the judgment dated 08.01.2014 made in SC No.83 of 2013 on the file of the Principal Assistant Sessions Judge, Thiruvannamalai, Thiruvannamalai District.

For Petitioner : Mr.S.Silambu Selvan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision has been filed to set aside the order dated 31.07.2018 made in Crl.A.No.2 of 2014 on the file of the learned Additional District Sessions Court, Thiruvannamalai, Thiruvannamalai District, confirming the judgment dated 08.01.2014 made in SC No.83 of 2013 on the file of the Principal Assistant Sessions Court, Thiruvannamalai, Thiruvannamalai District.

2. The case of the prosecution is that on 17.11.2011 at about 4.00 p.m when the defacto complainant is going to Girivalam at Thiruvannamalai, the revision petitioner/accused waylaid her, threatened her by showing knife and robbed 6 sovereigns of gold jewels and 122 grams silver anklet. Since

she alone went for girivalam, she lodged a complaint on the next day morning 10.00.a.m after discussing with her family members. The respondent police registered a case against the revision petitioner/accused for the offence under Section 352, 394 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. After completing the investigation, the respondent laid charge sheet before the Judicial Magistrate No-II, Tiruvannamalai. The learned Judicial Magistrate taken charge sheet on file in P.R.C.No.354 of 2012 and committed the case to the Sessions Judge. After the trial, the learned Principal Assistant Sessions Judge convicted the revision petitioner/accused for the offence under Section 352, 394 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and sentenced to undergo one month Rigorous Imprisonment for the offence under Section 352 IPC and 5 years Rigorous Imprisonment and fine of Rs.1,000/- in default 2 months Rigorous Imprisonment for the offence under Section 394 IPC and one year Rigorous Imprisonment for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Trial Court directed the sentences to run concurrently. There against, the accused preferred the appeal in Crl.A.No.2 of 2014 before the learned Principal District and Sessions Judge, Tiruvannamalai. After hearing the parties, the learned Additional District and Sessions Judge, Tiruvannamalai, dismissed the appeal on 31.07.2018 and confirmed the judgment of the trial Court. As against the said judgment, the appellant herein/accused has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that there is a delay in lodging the FIR. The occurrence took place on 17.11.2011 at 4.00 p.m, whereas the complaint was given by the defacto complainant only on the next day morning at 10.00 a.m and the reason for the delay was not properly explained. Both the Courts below have not considered the said fact. Further, the learned counsel would submit that there is no external injury on the defacto complainant. Though PW-6, Doctor has given the report that some injuries on the PW-1/defacto complainant, PW-1/defacto complainant has not spoken about the injury, which creates doubt. During 313 Cr.P.C proceedings, the accused has clearly stated that he denied the offence, and therefore, the defence taken by the revision petitioner/accused has not been considered by this Courts below, hence, conviction and sentence imposed by the Courts below has to be set aside.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that the complainant herself stated the reason for the delay. The complainant went to girivalam alone, she being a lady, she went to the house only at 7.00 p.m and after discussing with her family, she lodged the complaint in the next day morning. Therefore, the delay in preferring the

complaint was properly explained. Though the petitioner/accused stated that there was no injury, PW-2/mother of the defacto complainant stated that when the complainant reached the house, there was a swelling on her face. PW-6, Doctor has given the wound certificate for the injury sustained by her. Both the Courts below rightly appreciated the entire evidence and convicted the revision petitioner/accused. There is no perversity found in the judgments of both the Courts below the Session is liable to be dismissed.

5. Heard the learned counsel appearing for the revision petitioner, the learned Government Advocate (Crl. Side) appearing for the respondent and also perused the materials on record.

6. The case of the prosecution is that the revision petitioner/accused waylaid the defacto complainant, while she was going Girivalam at Thiruvannamalai, threatened her by showing knife and robbed 6 sovereigns of gold jewels and 122 grams silver anklet from her. The defacto complainant was examined as PW-1, she has clearly stated that the accused came by two wheeler and threatened her with knife and robbed the jewels and she preferred the complaint on the next day morning only due to her loneliness. PW-2/mother of the victim corroborated the evidence of her daughter and the recovery was also made on the next day through the recovery mahazar-Ex.P4. On reading of the evidence of PWs-1, 2, 6, it is seen that the prosecution has proved its case beyond reasonable doubts. Both the Courts below rightly appreciated the evidence and convicted the accused. Since this Court is the Revisional Court, it cannot exercise the power of the Appellate Court and re-appreciate the entire evidence. This Court has to see as to whether any perversity in appreciation of the evidence while deciding the case by Courts below. This Court does not find any perversity in appreciation of the evidence while deciding the case by the Courts below. In this regard it is pertinent to refer the decision of the Honourable Apex Court in the case of State of Kerala Vs. Putthumana Illath Jathavedn Namboodri, reported in AIR 1999 SC 981 held as follows:

".... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated

with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of Justice..."

7. Since there is no merit in this revision, this Criminal Revision Case is liable to be dismissed. However, considering the fact that there was no external injury and the entire jewels were recovered, this Court is inclined to reduce the sentence imposed on the petitioner/accused for the offence under Section 394 IPC. Accordingly, the sentence imposed on the petitioner/accused for the offence under Section 394 IPC is modified to 3 Years Rigorous Imprisonment.

8. This Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kmi

To

- 1) The Judicial Magistrate No.II,
Tiruvannamalai
- 2) - do - through The Chief Judicial Magistrate,
Tiruvannamalai

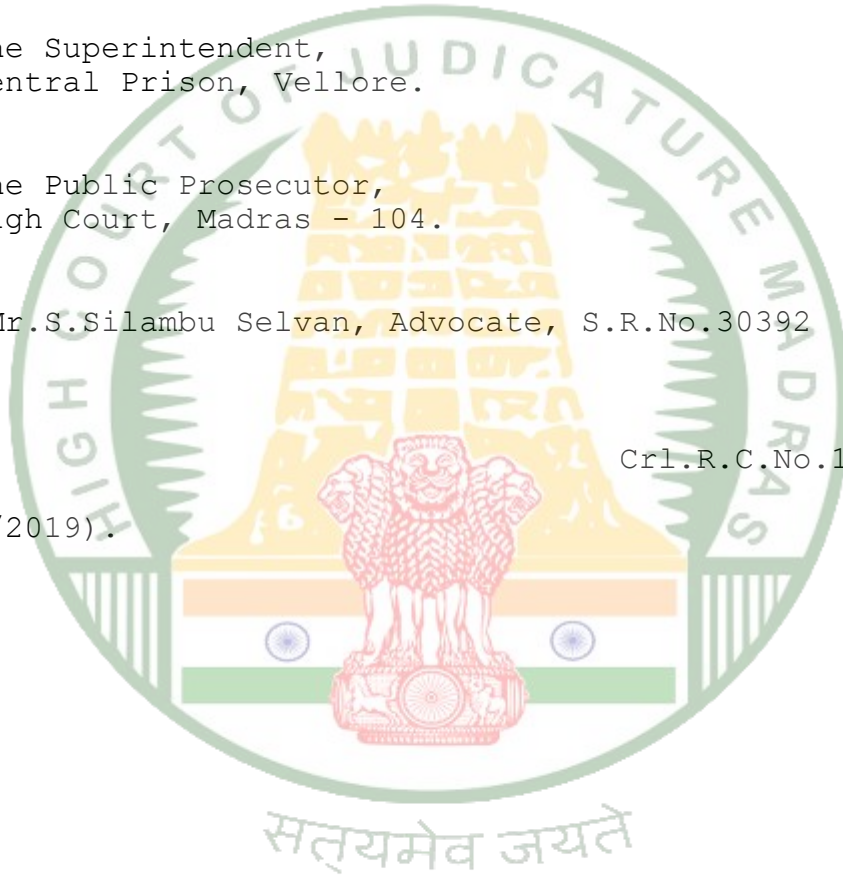
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- 3) The Assistant Sessions Judge,
Tiruvannamalai.
- 4) The Principal District and Sessions Judge,
Tiruvannamalai
- 5) The Additional District Sessions Judge,
Thiruvannamalai.
- 6) The Superintendent,
Central Prison, Vellore.
- 7) The Public Prosecutor,
High Court, Madras - 104.

+1 cc to Mr.S.Silambu Selvan, Advocate, S.R.No.30392

PPA (CO)
SSM(06/06/2019).

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