

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1443 of 2012
and
MP.No.1 of 2012

Chandrammal

... Petitioner/Accused

- Vs -

The State
rep. by the Sub-Inspector of Police,
Law & Order,
Railway Police,
Korukkupettai Railway Police Station,
Chennai-600 021.

... Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to set aside the conviction and sentence of two years rigorous imprisonment and to pay an amount of Rs.2,000/- as a fine failing to undergo a further period of one year rigorous imprisonment imposed by the XVI Metropolitan Magistrate, G.T Chennai in C.C.No.7038/2008 dated 16.05.2012 and confirmed by the XVII Additional Sessions Judge at Chennai in C.A.No.109/2012 dated 14.9.2012.

For Petitioner : Mr.M.Prabakar

For respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Case has been filed to set aside the judgment dated 14.09.2012 passed in Crl.A.No.109 of 2012 by the learned XVII additional Sessions Judge, Chennai, confirming the judgment dated 16.05.2012 made in C.C.No.7038 of 2008 passed by the learned XVI Metropolitan Magistrate, George Town, Chennai-1.

2. The case of the prosecution is that on 01.07.2008 at about 13.00 hours the revision petitioner herein along with two other accused are alleged to have given sedative cool drinks to the wife of PW-1 and taken her gold chain (weighing 3

sovereign). The respondent police registered a case in Crime No.266 of 2008 against the revision petitioner and two others for the offence under Section 379 r/w 34 IPC. After investigation, the respondent police filed a final report before the learned XVI Metropolitan Magistrate, George Town, Chennai and the same was taken on file in C.C.No.7038 of 2008. After trial, the learned Magistrate, by judgment dated 16.05.2012, while acquitting A2 & A3, convicted A1 for the offence under Section 379 r/w 34 IPC and sentenced her to undergo one year Rigorous Imprisonment and fine of Rs.2,000/-, in default, one month Rigorous Imprisonment. Challenging the said judgment, the first accused preferred an appeal in CrI.A.No.109 of 2012 before the learned XVII Additional Sessions Judge, Chennai. After hearing the arguments, the learned Sessions Judge dismissed the appeal and confirmed the judgment of the trial Court. Against the said judgment, the first accused preferred the present revision before this Court.

3. The learned counsel appearing for the petitioner would submit that there was a delay in sending FIR, but, the prosecution has not explained the reason properly. PW-2 is the victim girl and it is alleged that she was admitted in the hospital. However, no medical records has been produced to show that she was admitted in the hospital and also taken treatment. Neither Doctor was examined nor the medical records were produced to prove the same. PWs-3 and 5 are the mahazar witnesses. The learned counsel further submitted that though the occurrence had taken place in Chennai, the recovery was effected at Tiruppathi. There is no independent witness from local people as witness and the recovery itself is doubtful. Further, non-production of the medical evidence and the non-examination of the independent witness vitiate the case of the prosecution.

4. The learned Government Advocate (CrI.Side) appearing for the respondent would submit that PW-2 is the victim and she has clearly narrated the incident and PW-3 has spoken about the recovery. PW-2 has also given the confession statement. Though the charge was framed against three accused, the trial Court, considering the facts and circumstances of the case, acquitted A2 and A3 on the ground that the prosecution has not proved its case beyond reasonable doubts against them and rightly convicted A1 for the offence under Section 379 r/w 34 of IPC, which does not warrant any interference.

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

6. On a reading of the judgments of the Courts below, it is seen that the prosecution has proved its case beyond reasonable doubts. The First Appellate Court, being the final Court of fact finding, has rightly appreciated the entire evidence and dismissed the appeal filed by the first accused. This Court does not find any perversity in the appreciation of the evidence. However, this Court is of the view that the conviction recorded for the offence under Section 379 r/w 34 of IPC is not attracted, when the two other accused were acquitted on the ground that the prosecution has not proved its case. This Court finds that the revision petitioner has committed the offence under Section 379 of IPC but not 379 r/w 34 of IPC and hence, this Court reduces the sentence imposed on the appellant/accused, which will meet the ends of justice. Accordingly, the sentence imposed on the revision petitioner/accused is reduced to 9 months Rigorous Imprisonment instead of one year. Since the appellant/accused has already undergone the sentence of 9 months imprisonment, he may be released forthwith, if he is not required for any other case.

7. In the result, this Criminal Revision Case is dismissed with the above modification. Consequently, connected miscellaneous petition is also closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

KMI

To

1. The XVII Additional Sessions Judge,
Chennai.

2. The XVI Metropolitan Magistrate,
George Town, Chennai.

3. The Sub-Inspector of Police,
Law & Order, Railway Police,
Korukkupettai Railway Police Station,
Chennai-600 021.

4. The Public Prosecutor,
High Court,
Madras-104.

+1 CC to Mr.M.Prabakar, Advocate sr 65839

CrI.R.C.No.1443 of 2012

LA(CO)

SP(17/09/2019)