

Bail Slip.

The Appellant/Petitioner/Accused namely Kutty @ Christopher was directed to be released on bail as per the order of this Court dated 30.07.2012 in M.P. 3/2012 in CrI.R.C.No.865/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.865 of 2012

Kutty @ Christopher

... Petitioner/Appellant/Accused

Vs.

State rep. by
Inspector of Police,
Sankar Nagar Police Station,
Kancheepuram District.
(Crime No.533/2006)

... Respondent/Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to call for the records pertaining to the judgment made in C.A.No.205 of 2008 dated 10.7.2012 by the learned Additional District Sessions Judge, Kancheepuram District at Chingleput by confirming the judgment made in C.C.No.661 of 2006 dated 18.11.2008 by the learned Judicial Magistrate, Tambaram convicting and sentencing the Petitioner herein to undergo one year R.I and to pay a fine of Rs. 1000 in default to undergo one year R.I and to pay a fine of Rs. 1000/- in default to undergo 2 months R.I for the offence under section 394 IPC and to set aside the same.

For Petitioner : Mr.T.R.Ravi

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (CrI. Side)

O R D E R

This Criminal Revision has been filed to set aside the judgment dated 10.07.2012 made in Crl.A.No.205 of 2008 passed by the learned Additional District Sessions Judge, Kancheepuram District at Chingleput by confirming the judgment dated 18.11.2008 made in C.C.No.661 of 2006 passed by the learned Judicial Magistrate, Tambaram.

2. The case of the prosecution is that on 18.06.2006 at about 5.00 p.m the revision petitioner/accused waylaid Anthony Vevin [PW-3] near J.K.Lorry Mechanic Shed, Victoria Street, Kamarajapuram, Anakaputtur, Chennai and insisted to give his jewels, for which, he refused and hence the accused assaulted him in the cheek and chin and snatched gold chain worth Rs.10,000/- and waist string worth of Rs.10,000/-. PW-1/Sister of PW-2 gave a complaint before the respondent police and a case in Crime No.533 of 2006 was registered under Section 341, 325, 394 IPC against the accused. After completing the investigation, the respondent police laid the charge sheet before the learned Judicial Magistrate, Tambaram and the same was taken on file in C.C.No.661 of 2006. After trial, the learned Magistrate came to the conclusion that the revision petitioner/accused found guilty and convicted him for the offence under Section 394 IPC and sentenced him to undergo one year Rigorous Imprisonment and fine of Rs.1,000/-, in default, two months Rigorous Imprisonment. Challenging the said judgment of the learned Judicial Magistrate, the convict filed an appeal in Crl.A.No.205 of 2008 before the learned Principal District and Sessions Judge, Kancheepuram at Chingleput and the same was made over to the learned Additional District and Sessions Judge, Kancheepuram at Chingleput. After hearing the arguments, the learned Sessions Judge dismissed the appeal by a judgment dated 10.07.2012 and confirmed the conviction and sentence passed by the learned Magistrate. As against the said judgment, the accused has filed the present revision before this Court.

3. The learned counsel appearing for the petitioner would submit that a false case has been foisted against the revision petitioner. The revision petitioner was working as a cleaner under the father of the victim [PW-3]/husband of PW-2. The petitioner/accused demanded arrears of wages, and in order to escape from the payment of arrears, the victim's family foisted the false case against the revision petitioner. The revision petitioner was also brutally attacked by the police and he was hospitalised for 15 days before the Jail Authorities. There was no recovery made from the revision petitioner, which creates doubt. Though the occurrence took place on 18.06.2006, the accused was arrested on 20.06.2006 and remanded to judicial custody on 21.06.2006. The witnesses were recorded immediately,

however, all the documents reached the Court belatedly i.e., one month later, which creates suspicious. One Rajathi, who took the victim to the festival and left him alone, was not examined in this case. The mother of the victim [PW-2] has not given the complaint, whereas, the complaint was given by the sister of PW-2, which also creates doubt. PWs-1 and 2 have not seen the occurrence. Therefore, the prosecution foisted a false case against the revision petitioner and they have not proved its case beyond reasonable doubts. Though there is flaw in this case, both the Courts considered the aspects only on the sympathy ground and convicted the revision petitioner. Further, the Investigation Officer has not properly investigated the matter and he has not prepared rough sketch and observation mahazar. Further, the petitioner is a known person to the victim boy and the evidence of the victim [PW-3] also proved the same, and hence, he could not have slapped the victim and also could not have stolen the jewels from the victim. In order to take vengeance, the respondent foisted a false case against the revision petitioner. There is perversity in the appreciation of evidence. Therefore, this Court has to interfere with the judgment of both the Courts below.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that the victim boy, who was studying 3rd standard, has clearly narrated the occurrence. The accused, who is a known person to the victim, by promising him to give toys, took him to the lorry shed and insisted him to give jewels, for which, he refused to give the same and hence, the accused slapped the victim and brutally attacked him. Doctor evidence also shows that the victim sustained grievous injuries. Ex.P2-Accident Register and the wound certificate clearly shows that the victim boy sustained grievous injuries. There is no eye witness except the injured witness. The victim [PW-3] has clearly stated about the involvement of the accused. The medical evidence also corroborated the same and hence, the prosecution has proved its case beyond reasonable doubts. Mere delay in sending the FIR and the statement to the Court has not been fatal to the case of the prosecution. The prosecution has proved its case beyond reasonable doubt. Both the Courts below rightly appreciated the evidence and convicted the accused. There is no reason to interfere with the judgments of the Courts below.

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

6. Admittedly, the revision petitioner/accused is known person. The father of the victim boy is working as a driver and

at that time the accused was working as a cleaner under him. On 18.06.2006 PW-1 went to attend the Anthoniar Church Festival along with her children. At that time, one Rajathi took the victim to the festival. Since the accused was known person, the victim boy went along with him. The accused took him to the remote place, where he insisted the boy to give the gold bracelet, for which, when he refused, and hence, the accused slapped him and kicked him brutally, due to which, the victim became unconscious and the accused snatched the jewels from the victim boy. After the victim recovered and based on the information given by him, the sister of PW-2 preferred the complaint. Though PWs-1 & 2 are not the eye-witnesses, the victim boy himself has narrated the occurrence. Further, the revision petitioner/accused and the victim boy are the known persons. PWs-1 to 3 have also admitted that the revision petitioner/accused was working as a cleaner in the lorry, in which, the father of the victim boy was working as the driver. There is no material to show that there was salary/wages dispute between the father of the victim boy and the revision petitioner/accused. Though the defence counsel admitted that there was enmity regarding the payment of salary to the accused, there is no material to prove the same. The evidence of Doctor/PW-5 and the medical evidences also corroborated the evidence of PW-3/victim boy. Both the Courts have rightly appreciated the entire evidence. The Appellate Court, being the final Court of fact finding, independently recorded the conviction and confirmed the judgment of the trial Court. This Court, as the Revision Court cannot sit in the arm chair of the Appellate Court and reassess the entire evidence. This Court cannot substitute its own view in the absence of perversity in appreciation of evidence by both the Courts below. There is no sound ground and reason to interfere with judgments of the Courts below and this revision is liable to be dismissed.

7. Accordingly, this Criminal Revision case is dismissed. The judgment dated 10.07.2012 made in CrI.A.No.205 of 2008 passed by the learned Additional District and Sessions Judge, Kancheepuram District at Chengalpet is hereby confirmed. The trial Court is directed to secure the revision petitioner/accused to undergo the remaining period of sentence, if any.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

KMI

To

1.The Additional District and Sessions Judge,
Kancheepuram District at Chengalpet.

2.The Judicial Magistrate,
Tambaram.

3.The Inspector of Police,
Sankar Nagar Police Station,
Kancheepuram District.
(Crime No. 533/2006)

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

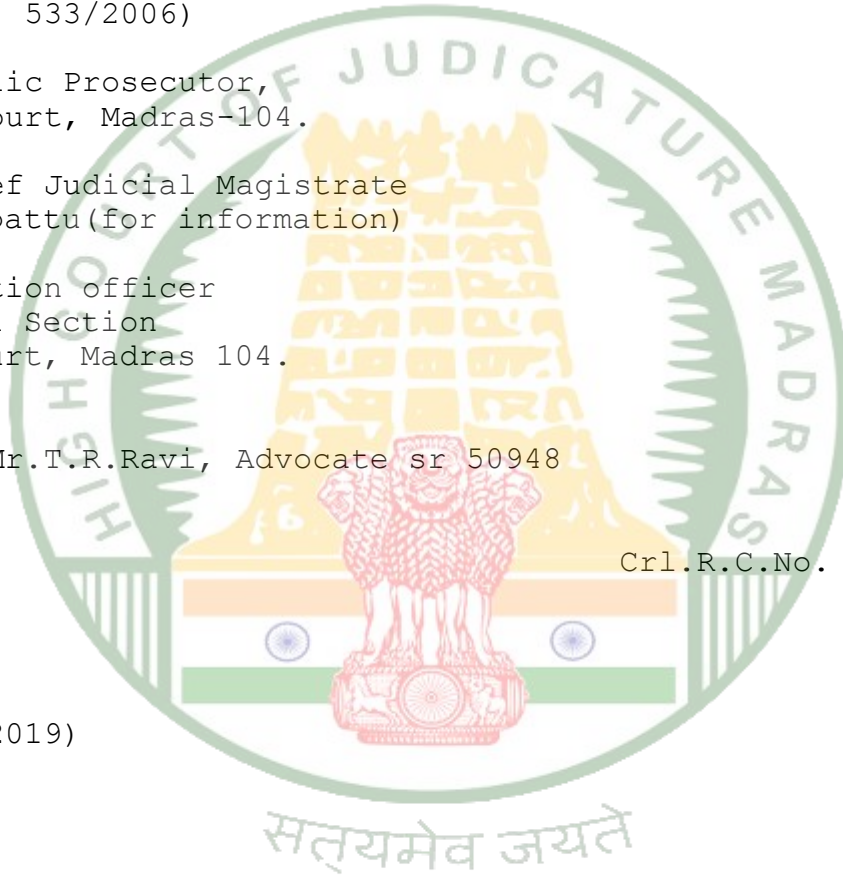
5.The Chief Judicial Magistrate
Chengalpattu(for information)

6.The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.T.R.Ravi, Advocate sr 50948

Crl.R.C.No. 865 of 2012

VBA (CO)
SP(08/08/2019)



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