



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.250 of 2019

and

CRL.MP.No.2669 of 2019

Shanmugam .. Petitioner/3rd Appellant/3rd Accused

Vs.

The Inspector of Police,
Magudanchavadi Police Station,
Salem District. ..Respondent/Respondent/Complainant

(Crime No. 543 of 2015)

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the order of conviction passed by the III Additional Sessions Judge, Salem in Crl.A.No.67 of 2018 dated 21.08.2018 by confirming the order passed by the Assistant Sessions Judge, Sankari in S.C.No.160 of 2017 dated 21.03.2018 convicting the petitioner for the offence under Sections 395 r/w 511 of IPC imposing 5 years Simple Imprisonment and fine of Rs.10,000/- in default 3 months Simple Imprisonment.

For Petitioner : Mr.R.Jayaprakash

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 of conviction dated 21.08.2018 passed by the learned III Additional Sessions Judge, Salem in Crl.A.No.67 of 2018 by confirming the order dated 21.03.2018 passed by the learned Assistant Sessions Judge, Sankari in S.C.No.160 of 2017.

2. The case of the prosecution is that PWs-1 to 3, who are residing in Kannanthery Village. While they were sleeping in the outside of Srinivasan's house, A1 to A5 came there and A1 threatened the defacto complainant and asked him to open the door and hand over all the money and jewels. Immediately, PW-2 telephoned the neighbours and all the villagers surrounded the accused including the revision petitioner and handed over the custody to the respondent police. The



respondent police registered a case against A1 to A5 for the offence under Section 395 r/w 511 IPC. Since it is admitted that the accused trespassed into the house, threatened the defacto complainant and also tried to rob available things in the house of the defacto complainant, the respondent police, after completing investigation, laid a charge sheet for the offence under Section 395 r/w 511 IPC against the accused including the revision petitioner, who was shown as A3 in the FIR as well as in the charge sheet. On committal, the case was tried in SC No.160 of 2017 before the learned Assistant Sessions Judge, Sankari. After considering the evidence and materials placed by the prosecution, the learned Assistant Sessions Judge, Sankari, convicted the accused 2 to 5 for the offence under Section 395 r/w 511 IPC and sentenced to undergo 5 years Simple Imprisonment and fine of Rs.10,000/- each in default, 3 months Simple Imprisonment. Against the said order, A2 to A5 preferred the appeal in CrI.A.No.67 of 2018. The learned III Additional Sessions Judge, Salem, after perusing the entire records, dismissed the appeal and confirmed the judgment passed by the trial Court. There against, A3 is before this Court by way of the present revision on the following grounds:-

1. That the Courts below ought to have seen the credibility of the complaint, which is Ex.P1 and the same is given to the respondent police on 23.09.2015 at 4.00 a.m and forwarded to the concerned Judicial Magistrate after 15.00 hours and the prosecution miserably failed to explain the delay in forwarding the complaint to the Court.
2. That the Courts below failed to view that the PW-1 and other prosecution witnesses even under Sec.161 statements had said nothing about the availability of Power source and lighting in the place of occurrence of offence and also investigating officer PW-11 also says nothing about the lighting in the place of offence but subsequently the PW-1 witness evidenced about lighting in the place of offence in the trial before the Court.
3. That the Courts below erred in appreciating the identification given by prosecution witnesses against the petitioner during the judicial inquiry and failed to note that during the police investigation nothing had been said regarding the physical identification, age and other related factors of the appellant as accused and the same is against the well settled principles of Criminal Jurisprudence.
4. That the Courts below failed to view that PW-11 had not evidenced the said cell phone as exhibit which is the best electronic evidence before the Court which reveals that the entire prosecution against the petitioner herein is fabricated and false one.



learned Government Advocate (Crl.side) for the respondent. Perused the entire materials on record.

4. The learned Government Advocate (Crl.side) appearing for the respondent would submit that PWs-1 to 5 are eye-witnesses, who have clearly spoken about the incident and also the accused were caught red handed by the villagers in the place of occurrence itself. The evidence of PWs-1 to 5 corroborated the same. Apart from that they have also given the confession statement. There is no reason to discard the evidence of the prosecution and the prosecution proved its case with cogent evidence. Both Courts have concurrently hold that the accused have been found guilty and sentenced as stated above. Hence, there is no merit in this revision.

5. It is the case of the prosecution that A1 to A5 threatened the defacto complainant at knife point and asked him to hand over all the money and jewels. As stated by the learned Government Advocate (Crl.side) that PWs-1 to 5 are the eye witnesses and they have clearly spoken about the occurrence and also the involvement of the revision petitioner. While exercising the revisional jurisdiction, the Court cannot re-appreciate the entire evidence and it has to see as to whether any perversity in appreciation of evidence before the Courts below. On reading of the entire evidence and materials placed before the Courts below and also the judgment of the Courts below, it is seen that there are specific charges levelled against the revision petitioner. On scrutinizing the evidence of PWs-1 to 5 reveals that the trial Court has rightly appreciated the evidence adduced before it. The Appellate Court has also rightly re-appreciated the entire evidence and found that the revision petitioner found guilty.

6. On careful consideration of the entire records, this Court does not find any perversity in the appreciation of the evidence of both the Courts below. This Court cannot substitute any reason given by the Courts below or the findings. In the circumstances, there is no merit and this revision is liable to be dismissed. Accordingly, this Criminal Revision case is dismissed in the admission stage itself. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Kmi



To

1. The Assistant Sessions Judge,
Sankari.

2. The III Additional Sessions Judge,
Salem.

3. The Inspector of Police,
Magudanchavadi Police Station,
Salem District.

4. The Superintendent,
Central Prison,
Coimbatore.

5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No. 24520

Cr1.R.C.No.250 of 2019
and
CRL.MP.No.2669 of 2019

VBA (CO)
GN(20/12/2019)