



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C. (MD)No.218 of 2013

Sivalingam

.. Petitioner/Appellant/
Sole Accused

Vs.

State rep. by,
The Inspector of Police,
Sriengam Police Station,
Tiruchirappalli,
Tiruchirappalli District.
(Cr.No.84 of 2003)

.. Respondent/Respondent/
Complainant

Prayer : This Criminal Revision petition is filed under Section 397 r/w 401 of Cr.P.C., to call for the records in Crl.A. No.109 of 2008 on the file of the learned I Additional District Sessions Judge(PCR), Tiruchirappalli, Tiruchirappalli District and set aside the Judgment dated 05.07.2012, confirming the conviction and sentence in S.C.No.114 of 2006 on the file of the learned Chief Judicial Magistrate, Tiruchirappalli, Tiruchirappalli District, dated 11.09.2008 and acquit the petitioner/accused.

For Petitioner : Mr. A.Thiruvadikumar

For Respondent : M/s.S.Bharathi,
Government Advocate(Crl.Side).

ORDER

The Revision petitioner was tried for the offence under Section 452, 392, 394 and 397 of I.P.C. in S.C.No.114 of 2006 on the file of the learned Chief Judicial Magistrate, Thiruchirappalli. By Judgment dated 11.09.2008, he was convicted and sentenced as follows:-

Accused	Penal Provisions	Punishment
Sole Accused	397 of I.P.C.	To undergo imprisonment for 5 years R.I.
	452 of I.P.C	To undergo imprisonment for 5 years S.I. with fine of Rs.500/-, in default, to undergo 6 months S.I.



Aggrieved by the same, the petitioner filed C.A.No.109 of 2008 before the learned I Additional District and Sessions Judge (PCR), Thiruchirappalli. By Judgment dated 05.07.2012, the appellate Court dismissed the appeal and confirmed the Judgment of the trial Court. Questioning the same, the Criminal Revision has been filed.

2. Heard the learned counsel on either side.

3. The learned counsel appearing for the Revision petitioner reiterated all the contentions set out in the memorandum of grounds. He wanted this Court to reverse the Judgment of the Court below.

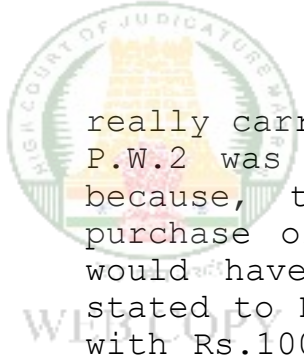
4. Per contra, the learned Government Advocate (Criminal Side) submitted that the Judgments passed by the Courts below do not warrant any interference.

5. I carefully considered the rival contentions and perused the evidence on record.

6. The case of the prosecution is that the Revision petitioner in the guise of a buyer of old news papers went to the house of the victim and committed the offence in question on 20.02.2006 at about 12.45 p.m. The petitioner is said to have inflicted a grievous injury on the neck of P.W.2 and escaped with Gold Thali chain worn by the victim. In this regard, the complaint was lodged by P.W.1 before the Inspector of Police, Srirengam police station vide Ex.P.1. Thereupon, Ex.P.11 First Information Report was registered. Investigation was undertaken and final report was filed against the petitioner and cognizance of the offence mentioned above was taken.

7. The petitioner denied the charges and claimed to be tried. The prosecution examined as many as 14 witnesses and marked Ex.P.1 to Ex.P.13. M.O.1 to M.O.9 were marked. The accused did not adduce any evidence. The learned trial Magistrate found the accused guilty of the offence under Sections 452 and 397 of I.P.C. and the same was also confirmed by the appellate Court.

8. It is seen that P.W.2 had identified the petitioner during the trial. The contention of the petitioner's counsel is that admittedly the accused was not known to the victim earlier. That is why, even in Ex.P.3 Accident Register, the victim had stated that the assailant was not known to her. Even though no Identification Parade was conducted, she identified the accused, I am of the view that it would not affect the prosecution case. This is because even if the accused had been identified in the Identification Parade, that would still not be substantive evidence. But the identification of the accused by the witness before the Court alone would be substantive evidence. P.W.2 did not know the accused earlier. She has no motive or enmity against the accused. Therefore, her identification of the accused as the person who caused injury on her



really carries conviction with the Court. It is quite possible that P.W.2 was able to remember the features of the accused. This is because, the accused had approached P.W.2 with the purpose of purchase of old news papers and definitely, the whole transaction would have lasted quite a few minutes. Thereafter, the accused stated to P.W.2 that he would fetch the cash. He went and came back with Rs.100/- and the same was received by P.W.2 and she also gave the balance amount. Only thereafter, the occurrence had taken place. Therefore, it is not surprising that P.W.2 was able to correctly identify the accused.

9. What clinches the case of the prosecution is the recovery. The Gold Thali chain stolen by the petitioner was recovered from P.W.6 and marked as M.O.1. Likewise the gold chain was recovered and it was marked as M.O.2. The recovery of the jewels following the confession made by the accused clearly establishes his culpability. M.O.9 Knife was the weapon used for inflicting the injury on the neck of the victim.

10. The Courts below have concurrently found the petitioner guilty of the offences with which he was charged. I am only exercising Revisional jurisdiction. I cannot re-appreciate the evidence, unless the Judgment of the Court below is shown to be perverse. No such ground has been made out.

11. Since conviction under Section 397 of I.P.C. carries a minimum sentence of 7 years Rigorous Imprisonment, it is not known as to why the Courts below imposed 5 years' sentence.

12. Be that as it may, I do not want to interfere with the Judgments passed by the Courts below. The Criminal Revision stands dismissed. The learned trial Magistrate is directed to secure the petitioner to undergo the remaining period of sentence. The bail bond, if any, executed by the petitioner shall stand cancelled. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The I Additional District Sessions Judge (PCR),
Tiruchirappalli, Tiruchirappalli District.

2. The Chief Judicial Magistrate,
<https://hcservices.ecourts.gov.in/hcservices/>
Tiruchirappalli, Tiruchirappalli District.



3. The Inspector of Police,
Srirengam Police Station,
Tiruchirappalli District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-73633[F] dated
05/07/2019)

Crl. R.C. (MD) No.218 of 2013
04.07.2019

pmu
JMN(29.08.2019) 4P : 8C