

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. NO. 577 OF 2010

Arulraja @ Raja

.. Petitioner

- Vs -

State by

The Inspector of Police,
Appakoodal Police Station
Erode District.

(crime no.162 of 2002)

.. Respondent

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure to set aside the conviction imposed in the judgement dated 23.04.2010 made in C.A.No.64 of 2009 on the file of the Additional District and Sessions Court/ Fast Track Court No.IV, Bhavani, reducing the sentence by confirming the conviction imposed in the judgement dated 30.03.2009 made in C.C.No.77 of 2003 on the file of the Judicial Magistrate, Bhavani.

For Petitioner : Mr. N.Manokaran

For Respondent : Mr. C.Iyyapparaj, APP

ORDER

This revision petition is preferred against the order dated 23.04.2010 made in C.A.No.64 of 2009 on the file of the Additional District and Sessions Court/ Fast Track Court No.IV, Bhavani, confirming the conviction but reducing the sentence recorded by the learned Judicial Magistrate, Bhavani, in C.C. No.77/2003.

2. The accused was charged and tried before the learned Judicial Magistrate, Bhavani, which ended in conviction for the offences u/s 419 and 386 IPC and was sentenced as under :-

Section	Sentence
U/s 419 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of two years.

U/s 386 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month.
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The sentences were directed to run concurrently and set-off was provided u/s 428 Cr.P.C.

3. Aggrieved by the said conviction and sentence the accused preferred appeal before the Addl. District & Sessions Judge, FTC No.4, Bhavani, Erode District, in C.A. No.64/09, and the appellate court, while confirmed the conviction, reduced the sentence from two years to one year, but retaining the fine imposed on the accused. Aggrieved by the same, the present revision has been filed.

4. The case of the prosecution is that the accused impersonated the police officers and not only threatened the defacto complainant of dire consequences if he does not allow his son to accept that he had made certain anonymous calls, but also demanded a sum of Rs.35,000/- and failure of the defacto complainant to pay, the accused threatened that the family of the defacto complainant will be done away with. Therefore, on the complaint Ex.P-1, given by P.W.1, FIR was registered and investigation was taken up leading to the arrest of the accused and subsequent filing of the charge sheet against the accused for the offences as shown above.

5. On the appearance of the accused/petitioner, the provisions of Section 207 Cr.P.C. was complied with and the case was committed for trial in C.C. No.77/03. After trial, the trial court found the petitioner/accused guilty of the offences and sentenced him as above against which the petitioner/accused preferred appeal before the Addl. District & Sessions Court (FTC-4), Bhavani. The appellate court, on the basis of the materials available before it, concurred with the view taken by the trial court to convict the accused/petitioner herein and, accordingly, affirmed the conviction, but reduced the sentence imposed on the accused/petitioner herein. Aggrieved by the said conviction and sentence, the present revision has been preferred.

6. Mr.Manokaran, learned counsel appearing for the revision petitioner contended that the witnesses examined by the prosecution do not corroborate each other. It is the further submission of the learned counsel for the appellant that the delay in lodging the complaint creates a grave doubt on the prosecution version. It is the further submission of the

learned counsel for the petitioner that no independent witness was examined to support the case of P.W.s 1 to 5. It is the further submission of the learned counsel that the seizure is hit by Section 27 of the Evidence Act. No motive have been proved by the prosecution, which is an essential ingredient to base a conviction. However, the courts below have accepted the said evidence to convict the petitioner herein which requires interference at the hands of this Court.

7. Per contra, Mr.Iyyapparaj, learned Addl. Public Prosecutor appearing for the respondent submitted that the evidence of the witnesses corroborate each other, which has been taken note of by the courts below. Further, it is the submission of the learned Addl. Public Prosecutor that non-examination of independent witnesses would not vitiate the prosecution when the evidence of the other witnesses inspire the confidence of this Court and are corroborating each other. The courts below have appreciated the evidence in proper perspective and, therefore, no interference is warranted with the judgment passed by the courts below.

8. This Court heard the submissions of the learned counsel appearing for the petitioner and the learned Addl. Public Prosecutor appearing for the respondent and perused the materials available on record.

9. A careful analysis of the evidence on record reveals that the accused/petitioner had been apprehended by the police party along with the residents of the locality in which P.W.1 was living. P.W.9 in chief examination has stated that wrong calls were received on her number and a complaint was raised, which resulted in the stoppage of wrong calls and, thereafter, the accused came to the house of P.W.9 and took an appreciation letter. It is the evidence of P.W.3, the wife of P.W.1 that the accused had telephoned their residence and had told them that their son is unnecessarily making calls to other persons. The testimony of P.W.s 1 to 5 reveal the accused had come to their house and threatened them to part with money, failing which the family of P.W.1 will be done away with.

10. It is further evident from the deposition of P.W.1 that the accused had asked them to come to the office of the Superintendent of Police and when they went they, the accused had not turned up and, thereafter, the accused had come to their residence and had told them that he was at the office of the Superintendent of Police and that P.W.s 1 and 2 did not turn up there. It is further evident from the deposition of P.W.1 that based on the trap laid by the law enforcing agency, P.W.1 called the accused and stated that he will pay the amount and, thereafter, the accused asked him to come to a particular place

at about 12.00 midnight and, accordingly, P.W..1 went there, along with the police party and witnesses and waited for the arrival of the accused. The accused came in the car belonging to P.W.8. This evidence of P.W.1 finds corroboration in the evidence of P.W.8. The accused was apprehended red-handed by the police party, when he came to meet P.W.1. Therefore, the culpability of the accused/petitioner stands established not only by his act, but also through the evidence of P.W.s 1 and 8.

11. Though it is the contention of the learned counsel for the accused/petitioner that no independent witnesses were examined, however, it should not be lost sight of that P.W.8 is an independent witness, who had rented his car to the accused and had accompanied him to the place along with the cleaner of the car, where the accused was apprehended. Therefore, the contention that no independent witness was examined pales into insignificance.

12. On an overall analysis of the entire evidence on record as also the judgments passed by the courts below, this Court is of the considered view that the courts below have considered the evidence in proper perspective and have decided to impose the conviction, which does not warrant any interference.

13. However, when this Court was about to confirm the sentence, learned counsel appearing for the petitioner submitted that the petitioner is not a habitual offender and the offences not being grave in nature, this Court may consider sentencing him to the period already undergone, as almost a decade and half has passed since the commission of the offence and the petitioner has reformed himself, married and is survived by his wife and children and is leading a peaceful life and, therefore, considering the passage of time, leniency may be shown on the petitioner. It is further submitted that the petitioner has already undergone a period of about six months imprisonment.

14. No doubt, the trial court has sentenced the appellant for a period of two years, which has been reduced to a period of one year by the appellate court. It is evident that the incident had taken place in the year 2002 and almost a decade and a half has passed since then. The petitioner was aged around 31 years on the date of the occurrence and by now he would be around 50 years of age and that the passage of time and the damocles sword of conviction and sentence hanging over his head for all these years, would definitely have made a man out of him and a harsh sentence at this stage of life would have a traumatizing effect on the family of the petitioner more than the petitioner. However, the act of the petitioner cannot be brushed aside without the petitioner being made to realise the consequences of his act and the demoralizing effect that it

would have left on the lives of the defacto complainant's family. In such view of the matter, this Court is of the considered opinion that while confirming the conviction, the sentence of rigorous imprisonment for a period of one year, imposed by the appellate court, could be modified to the period already undergone, but maintaining the fine imposed.

15. In the facts and circumstances of the case, the criminal revision petition is dismissed confirming the conviction and sentence of fine imposed on the petitioner u/s 419 and 386 IPC. But insofar as the sentence

M.DHANDAPANI.J

jrs/GLN

u/s 419 and 386 IPC are concerned, the sentence of one year rigorous imprisonment is modified and instead he is sentenced to imprisonment for the period already undergone.

16. In the result, this criminal revision case is dismissed with the above modification in sentence.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

JRS/GLN

To

1. The Addl. District & Sessions Judge
(FTC-4), Bhavani.
2. The Judicial Magistrate
Bhavani.
3. The Public Prosecutor
High Court, Madras.

+1cc to Mr.N. Manokaran, Advocate, S.R.No.7886

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rgn(CO)

jrs(29/05/2020)