



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.01 of 2016

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A.Vaigundaraja ...Petitioner / Appellant/Sole Accused
Vs

The State,
The Sub Inspector of Police,
Kanyakumari Police Station,
Kanyakumari District. ...Respondent / Respondent /Complainant

PRAYER: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the case in C.A.No.84 of 2010 on the file of the Mahalir Fast Track Court, Nagercoil and set aside the conviction and sentence dated 20.10.2015 confirming the judgment dated 30.09.2010 made in C.C.No.187 of 2008 on the file of the Judicial Magistrate No.1, Nagercoil and acquit the petitioner by allowing this revision case.

For petitioner : Mr.Thiruvadikumar,
Legal Aid Counsel

For Respondent : Mr.A.Robinson,
Government Advocate (Crl Side)

ORDER

This revision petitioner was found guilty by the trial Court as well as by the appellate Court for the offence under Sections 457 and 380 IPC and aggrieved over same, the present revision petition has been filed.

2.The petitioner was tried for the offence under Sections 457 and 380 IPC before the learned Judicial Magistrate No.I, Nagercoil in C.C.No.187 of 2008 and the trial Court by order dated 30.09.2010 found this petitioner guilty for the offence under Sections 457 and 380 IPC, convicted and sentenced him to undergo simple imprisonment for six months with fine of Rs.200/- in default to undergo, one month simple imprisonment for the offence under Section 457 IPC; and to undergo simple imprisonment for six months with fine of Rs.200/- in default to undergo, one month simple imprisonment for the offence under Section 380 IPC. The sentences were ordered to run concurrently.

3.Aggrieved over the conviction and sentence the petitioner also preferred an appeal before the Court of Sessions, Kanniyakumari @ Nagercoil and the same was dismissed by the learned Sessions Judge, Mahila Fast Track, Nageroil in C.A.84 of 2010 dated 20.10.2015. Challenging the judgments of the trial Court and the



appellate Court, the present revision case has been filed.

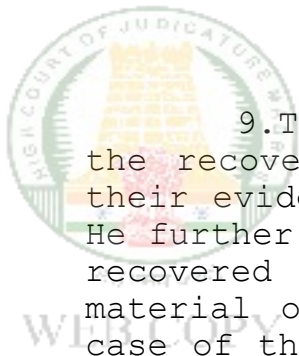
4.The case of the prosecution is that the accused/petitioner and the PW1, PW2, PW3 and PW4 are the residents of Lee Puram at Kanniyakumari District. PW1 and PW2 are the husband and wife. On 24.07.2008, while PW1 Chandrasekar and PW2 Muthuselvei were sleeping in the bedroom in their house, around 2.00am, the accused / petitioner had trespassed into the house by opening the door and went to the bed room and snatched the Mangal Sutra Chain worn by PW2, she in turn woke up and caught hold of the chain, thereby, retained 1 $\frac{3}{4}$ sovereigns of the chain and the accused had taken away the remaining 2 sovereigns of the chain from the PW2 and fled from the the place of occurrence. Immediately she raised an alarm and on hearing her noise, PW3 and PW4 have come there, they all together searched for the accused, but they could not trace him. In the morning around 11.30am PW1 lodged a complaint [Exp1] before the respondent Police and the same was registered in Exp4. The Investigation Officer [PW9] on receipt of the information, went to the place of occurrence and prepared observation mahazar [Exp2] and rough sketch [Exp5] and examined the witnesses and recorded their statements. On 05.10.2008, around 12.00 pm, the accused was arrested near the Lee Puram Junction and he voluntarily gave his statement in the presence PW2 and the admissible portion of the confession statement is marked as Exp6 and pursuant to the confession statement, 1 $\frac{3}{4}$ sovereigns of gold chain was recovered from the back side of the accused house under a cover of mahazar in Exp3. After completing the investigation, the Investigation Officer filed the final report as against the accused.

5.On the side of the prosecution 10 witnesses have been examined and 6 documents were marked.

6.The trial Court in conclusion of the trial, found this petitioner guilty, convicted and sentenced as stated supra.

7.Heard Mr.A.Thiruvadi Kumar, Legal Aid Counsel and Mr.A.Robinson, learned Government Advocate (Crl Side) appearing for the State.

8.Mr.Thiruvadi Kumar, learned Counsel has submitted that the house of the accused is only 500 meters away from the house of PW1 and PW2 and he is a wealthy person and there is no mention about the identification features of the accused in the complaint and in the FIR. He further submitted that the petitioner is said to have been arrested on suspicion on 05.08.2020, but there is no material to show how he is fixed as accused in this case. He further submitted that though the prosecution have stated that the stolen portion of the chain was recovered from the accused, the same was not marked before the Court.



9.The learned Counsel also submitted that the witnesses for the recovery are also relative to the PW1 and PW2 and therefore, their evidence and the recovery mahazar [ExP3] cannot be relied on. He further submitted that though the prosecution has stated that the recovered portion of chain was handed over to PW2, there is no material or separate mahazar for the same, which is fatal to the case of the prosecution. Further there is contradiction between the evidence of PW1 and PW2 in respect of the way in which the chain was snatched away, PW1 deposed that it was pulled and snatched, whereas PW2 stated that it was cut with cutting plier. Further the way how the accused entered into the house of the PW1 and PW2 is not explained, since it is stated the door was locked from inside. Therefore, all these would go to show that the prosecution case itself is doubtful. Moreover, the accused is not having any bad antecedent and he is well known to the PW1 and PW2 and the arrest is made after three months and he was well available in his locality only.

10.He also placed reliance on the following judgments:

1.**State of Haryana Vs Ramsingh [reported in 2002 SCC (cr1)350]**, wherein the Hon'ble supreme Court has held that significantly all disclosures, and even arrests have been made in the presence of three specific persons, namely, Budh Ram, Dholu Ram and Atma Ram - no independent witness could be found in the aforesaid context - is it deliberate or is it sheer coincidence - this is where the relevance of the passage from Sarkar on Evidence comes on. The ingenuity devised by the prosecutor knew no bounds - Can it be attributed to be sheer coincidence ? Without any further consideration of the matter, one thing can be more or less with certain amount of conclusiveness be stated these at least create a doubt or suspicion as to whether the same has been tailor-made or not and in the even of there being such a doubt, the benefit must and ought to be transposed to the accused persons.

2.**Sundar Lal Vs State reported in 1989 Online Del 401**, wherein it has been held as follows:

"48. According to the learned counsel, non-production of the ornaments and other case property including the weapons alleged to have been used in the commission of offence, is an infirmity which has to be held to be fatal to the prosecution case. They have referred to various judgments of tills Court in support of their plea. Those cases are:

1.Mhod. Ibrahim v. State .

2.Krishan Kumar v. State Cr. Appeal No. 179183 decided by a Division Bench on 11th September, 1987 (3).



3.Lala Ram and Anr. v. State, Cr. Appeal No 1161 84, decided on 3rd May, 1988 by a Division Bench. (4)

4.C. N. Thampy v. State, Cr. Appeal No. 75 of 1984 decided on November, 8, 1988 by a Division Bench.

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(49) In Lala Ram's case (supra) after noticing the provisions of the Code of Criminal Procedure and the provisions Contained in Chapter 11(e) Vol. Til of the High Court Rules and Orders, it was observed that the prosecution was duty bound to keep in safe custody the case property so that the appellate and revisional court could have the opportunity to examine and scrutinise the material before it on which the prosecution relied for proving its case against the accused persons. It was held that to deprive the High Court of the benefit of examining the weapon of offence and other articles taken into possession was a serious infirmity.

(50) In two of the cases cited, it appears that the infirmity regarding the non-production was held to be fatal to the prosecution case. However, in Krishan Kumar's case (supra), this court held that: "WE are not called upon to go into the general question whether non-production of case property before the appellate court or the revisional court is an infirmity which is fatal to the prosecution case. In the present appeal it could be held so as was held in Mohd. Ibrahim's case (supra)

(51) Thus the trend of the decisions of this Court is that non-production of the case property is a serious infirmity which can in the facts and circumstances of the case be held to be fatal to the prosecution case."

11.By referring the above judgment, the learned Counsel submitted that since in this case, the non marking of recovered portion of the chain as claimed by the prosecution, is a fatal to the prosecution.

12.Per contra Mr.Robinson, learned Government Advocate [Crl Side] submitted that the prosecution has proved its case beyond reasonable doubt through the evidence of PW1, PW2, PW3 and PW4 and through the recovery mahazar [ExP3]. The stolen portion of the chain, recovered from this accused, being a Mangal sutra, was handed over to the PW2 and therefore, it was not marked before the Court. Therefore, both the Courts below have rightly appreciated the evidence and found this appellant guilty, convicted and sentenced accordingly and hence, prayed for dismissal of this petition.



13.This Court paid its anxious consideration to the rival submissions and perused the materials placed on records.

14.Admittedly, both the petitioner as well as the PW1 and PW2 are from the same village Lee Pram. It appears that they are also known to each other. On the date of occurrence, the petitioner / accused is said to have gained entry into the house by front door, went to the bed room and snatched away the chain from PW2, while she fell asleep. In the incident, a portion of the chain was retained by PW2 and the remaining portion of the chain was recovered from the petitioner/accused after three months. Though PW1 and PW2 were present, at the time of occurrence, they were not able to catch hold of the petitioner/ accused.

15.As rightly pointed out by the learned Legal Aid Counsel, the identification features of the petitioner/accused are not mentioned in the complaint. After three months the petitioner was arrested, when the accused was walking along the road, on seeing the police party, he voluntarily gave confession statement and handed over the chain. According to the prosecution, the petitioner/accused is also residing in the same village, but he chose to voluntarily give the confession before the police only after three months of the occurrence. It appears, the way in which, the petitioner was arrested and the recovery was made from him is quite unnatural. Moreover, the recovery witnesses are also stated to be close relatives of PW1. A suggestion has also been made to PW1 that PW1 was having a doubt that the petitioner was moving close with his wife PW2.

16. There is a contradiction in the evidence of PW1 and PW2 with regard to the manner of the chain was taken away from PW2, because, PW2 stated it was cut with cutting plier, on the other hand, PW1 stated that it was pulled and snatched. The prosecution has not explained whether there was any injury sustained by PW2 in the course of the incident, while she caught hold of the portion of the chain. The other portion of the chain retained by the PW2 at the time of the occurrence is also not marked before the Court. It is stated that the recovered portion of the chain from the accused was handed over to the PW2. But neither it was photographed nor was marked before the court. Not even a photograph of either portion of the chain was produced before the Court.

17.The accused is stated to have entered into the house through front door. PW1 admitted in his evidence that he locked the front door from inside. Either in the observation mahazar or in the evidence to the mahazar witness there is no reference that the accused broke open the front door and entered into the house. The prosecution is silent as to how the petitioner entered into the house, when the door is locked from inside.



18.A suggestion was made to PW1 that PW2 was moving close with accused and therefore, the petitioner has been fixed as an accused, but it was denied by him. According to the prosecution, the petitioner is not having any bad antecedent and not involved in any other case and it is stated that he is a wealthy person and was very much available in the locality even after the occurrence. The conduct of the accused has also to be taken inconsideration.

19.Based on the recovery of the portion of the chain only, the petitioner is fixed as accused in this case. Unfortunately, as held in the **Sundar Lal**'s case cited supra, the non marking of the recovered portion of the chain is a fatal to the prosecution case and both the courts below have failed to take the same into consideration. That apart, the recovery witnesses are also stated to be the relatives of PW1 and PW2. Therefore, it appears even the recovery is also doubtful.

20.In view of the available evidence and circumstances and this Court is of the view that it is not safe to sustain the conviction imposed on the revision petitioner, when the recovery based on which, the petitioner is fixed as accused, is doubtful and when it is found the non marking of such recovered material to be fatal to the prosecution case.

21.Accordingly, this criminal revision is allowed. The judgment dated 20.10.2015 made in C.A.No.84 of 2010 by the learned Sessions Judge, Mahalir Fast Track Court, Nagercoil and the judgment dated 30.09.2010 made in C.C.No.187 of 2008 by the learned Judicial Magistrate No.1, Nagercoil are set aside. The revision petitioner is acquitted of the charges levelled against him and the fine amount, if any paid by the petitioner, shall be refunded to the revision petitioner.

22.This Court places it appreciation on record to Mr.Thiruvadi Kumar, learned Counsel and the Legal Aid Authority is directed to pay Rs.10,000/-[Rupees Ten Thousand] to Mr.Thiruvadi Kumar.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Sessions Judge,
Mahalir Fast Track Court,
Nagercoil.
- 2.The Judicial Magistrate No.I,
Nagercoil.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Sub Inspector of Police,
Kanyakumari Police Station,
Kanyakumari District.
- 5.The Superintendent of Police,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 6.The Superintendent of Police,
Kanniyakumari District.

Copy to:

1. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)
- 2.The Officer in charge,
The Legal Aid Authority,
Madurai Bench of Madras High Court, Madurai.

+ 1cc to Mr.A.THIRUVADIKUMAR ,Advocate, SR No.16012

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03.09.2020

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