

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.101 of 2019 &
Crl.M.P.Nos.949 of No.950 of 2019

Varadarajan ... Petitioner /Accused

Vs.

State Rep. by
The Inspector of Police,
Soolur Police Station,
Coimbatore District,
(Crime No.594 of 2014) ...Respondent/Complainant

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order Judgment made in C.A.No.335 of 2018, dated 17.12.2018, on the file of I Additional District and Sessions Judge, Coimbatore, confirming the Judgment made in C.C.No.546 of 2017, dated 27.07.2018, by the learned Judicial Magistrate, Soolur, Coimbatore.

For Petitioner : Mr.S.N.Arunkumar

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

O R D E R

This revision is preferred against the judgment of learned I Additional District and Sessions Judge, Coimbatore in C.A.No.335 of 2018, confirming the order of learned Judicial Magistrate, Soolur, Coimbatore, passed in C.C.No.546 of 2017, dated 27.07.2018.

2. The case of the prosecution is that on 11.08.2014, during 2.30 p.m., the accused while proceeding on motor bike by wearing helmet, snatched the 15 sovereigns of gold mangalya chain of the victim, when she was walking on the B.K.T. Lay Out. Upon the complaint of P.W.1, a case was registered in Crime No.594 of 2014, on the file of the respondent Police for the offences under Sections 392 of IPC. On completion of investigation, a charge sheet was filed. The case was tried in C.C.No.546 of 2017, on the file of the learned Judicial

Magistrate, Soolur, Coimbatore.

3. Before the trial court, on the side of the prosecution, 10 witnesses were examined and 11 documents were marked. None were examined on behalf of the accused, nor were any exhibits marked.

4. The trial Court, after enquiry, convicted the petitioner for the offence under Section 392 of IPC and sentenced him to undergo 3 years simple imprisonment and fine of Rs.10,000/-, in default, three months simple imprisonment. There against, the accused preferred an Appeal in C.A.No.335 of 2018, before the learned I Additional District and Sessions Judge, Coimbatore and the learned Sessions Judge also confirmed the finding of the trial Court, and dismissed the Appeal. Challenging the concurrent findings, the present Revision has been filed.

5. The learned counsel for the petitioner would submit that the petitioner is an unknown person to P.W.1 and no identification parade was conducted. The respondent-Police has foisted a false case against the petitioner / accused and the confession recorded was not admissible in evidence. The learned Judicial Magistrate had also failed to consider the legal as well as factual position that petitioner was not identified by the prosecution witness, since he is a stranger to the prosecution witness, and unless he identified, identification would not be recognized by the Court. Further, the confession recorded by the Police was not admissible in evidence and the learned Judicial Magistrate had failed to consider the same and convicted the accused and even in the Appeal, the learned Sessions Judge, had also failed to re-appreciate the evidence independently as a fact finding Court, and failed to consider the legal position, and simply dismissed the Appeal, which warrants interference.

6. The learned Government Advocate (Criminal Side) would submit that the petitioner is the habitual offender and the prosecution witnesses have clearly spoken about the involvement of the petitioner and also recovered the materials from him and he has also given confession statement, leading to recovery. Therefore, it is admissible in evidence under Section 27 of the Indian Evidence Act. Therefore, the trial Court rightly appreciated the evidence and convicted the accused and the appellate Court also extracted the evidence of prosecution witnesses P.W.1 and P.W.2, that how the witnesses have identified the accused. Therefore, there is no perversity in the order passed by the Courts below.

7. Heard the learned counsel on either side and perused the materials available on record.

8. Though the learned counsel for the petitioner would submit that only official witnesses alone submitted and no independent witness was supported the case of the prosecution, a perusal of deposition of P.W.1, it could be seen that, she deposed that while she was walking on the B.K.T.Lay out, a person by riding a two wheeler, by wearing a black colour helmet came in the opposite direction, and snatched the 15 sovereigns of her gold chain. In her evidence, she further stated that at the time of occurrence, the accused wore black colour pant and sandal colour shirt. Since the mirror in the helmet of the accused was lifted, she was able to see the accused. From the above, it could be seen that though the identification parade has not been conducted, P.W.1 had stated all the identity of the petitioner and further the petitioner / accused had also surrendered before the Court. During the trial, the petitioners/accused has given confession statement and material object was also recovered from the petitioner.

9. P.W.1 complainant in the Ex.P1-complaint, has clearly stated that she wore 15 sovereigns of gold Thali chain and the petitioner came in the opposite direction in a two wheeler, and snatched the 15 soverigns of gold Thali chain, and she had also clearly deposed in her evidence and also identified the accused. Further, the petitioner had also given confession, and the material was also recovered from him, therefore, the trial Court, on proper appreciation of evidence, rightly convicted the accused, and the same was confirmed by the appellate Court.

10. While exercising revisional jurisdiction, this Court need not to sit in the armchair of the appellate Court and revisit the entire evidence and also reappreciate the same. At the same time, the Court has to find out as to whether any perversity in appropriation of evidence in the order passed by both the Courts below, while appreciating the evidence on records.

11. On reading of the entire oral and documentary evidence, the trial Court, on proper appreciation of evidence, rightly convicted the petitioner/ accused. The appellate Court, as a factual finding Court, re appreciated the entire evidence, and dismissed the Appeal.

12. Therefore, this Court does not find any perversity in the Judgment of the both the Courts below and there is no merit in the revision. Accordingly, the conviction ordered by both the Courts below is confirmed. However, the sentence imposed on the petitioner to undergo rigorous imprisonment for a period of three years for the offence under Section 392 of IPC is

modified to two and half years.

13. With the above modification, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s
To

1. The I Additional District and Sessions Judge,
Coimbatore.
 2. The Judicial Magistrate, Soolur,
Coimbatore.
 3. The Inspector of Police,
Soolur Police Station,
Coimbatore District,
 4. The Public Prosecutor
High Court, Madras-104
- +1 cc to Mr.M.N.Balakrishnan Advocate sr6148

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