



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 30.04.2021)

(Pronounced on : 21.06.2021)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1062 of 2018

1.Arulkumar
2.Shanmugam
3.Vijayakumar
4.Venkatesh

... Petitioners/Appellants/Accused 2 to 5

.. Vs ..

State Rep.by
The Inspector of Police,
Magudanchavadi Police Station,
Salem District
(Crime No.543 of 2015)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to set aside the conviction imposed in the judgment dated 21.08.2018 made in C.A.No.67 of 2018 on the file of the learned III Additional Sessions Court, Salem confirming the judgment dated 21.03.2018 made in S.C.No.160 of 2017 on the file of the learned Assistant Sessions Court, Sankari.

For P1	:	Mr.W.Camyles Gandhi
For P2	:	Mr.S.N.Arun Kumar
For P3	:	Mr.Philip Ravindran Jesudoss
For P4	:	Mr.S.Shankar

For Respondent : Mr.R.Surya Prakash

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ORDER

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 P.Ws.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, P.W.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 I.P.C. 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 I.P.C against all the accused.

3. On committal, the case was tried in S.C.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 I.P.C 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 Crl.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.

4. Heard Mr.W.Camyles Gandhi, learned counsel for the first petitioner; Mr.S.N.Arunkumar, learned counsel for the second petitioner; Mr.Philip Ravindran Jesudoss, learned counsel for the third petitioner; Mr.S.Sankar, learned counsel for the fourth petitioner and Mr.R.Surya Prakash, learned counsel for the Government Advocate (Crl.Side).

5. The learned counsel for the first petitioner could contend 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.

6. The learned counsel for the second petitioner could contend that the Courts below failed to view that the P.W.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 P.W.11 also says nothing about the lighting in the place of offence but subsequently the P.W.1 witness evidenced about lighting in the place of offence in the trial before the Court.



7. The learned counsel for the third petitioner could contend that the Courts below erred in appreciating the identification given by prosecution witnesses against the petitioner during the judicial enquiry 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.

8. The learned Government Advocate (Crl.Side) could contend that the private prosecution witnesses P.W.1 to P.W.5 are eye witnesses and their evidence are clear and cogent and both the Courts below have concurrently held that the accused have committed the crime and charges against them that are proved beyond reasonable doubt found guilty and sentence accordingly.

9. Point for determination :

(i) Whether the order of conviction passed by the Court below is sustainable in law?

(ii) Whether the quantum of sentence is exonerated?

10. The case of the prosecution is that A1 to A5 threatened the defact 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 P.W.s 1 to 5 are the eye witnesses and they have clearly spoken about the occurrence and also the involvement of the revision petitioner.

11. The learned Government Advocate (Crl.Side) submitted that the second petitioner Shanmugam has separately filed Crl.revision No.250/19 which was dismissed on 14.03.2019 by My learned brother Hon'ble Justice P.Velmurugan and hence this revision by the very same petitioner as a second petitioner is dismissed. In view of the earlier petition being dismissed in the above said revision.

12. P.W.1 Palaniappan and P.W.3 Chellammal is the wife of P.W.1. P.W.2, P.W.4 and P.W.5 are independent witnesses who are neighbours in the scene of the occurrence.

13. The case of the prosecution in brief is that while P.W.1, P.W.2 and P.W.3 were sleeping in their home, all the five accused with an intention to commit dacoity, has entered into the house and surrounded the cot where P.W.1 was sleeping and on the knife point, they were asked to de-part the valuables in the home and P.W.1, who was sleeping out side of the home, has contacted his friends over phone and thereby, witnesses P.W.4 to P.W.6 were came to the spot and on seeing the public near the



house, the accused have attempted to flee from the scene, however, general public, who caught hold of them, were examined as P.W.4 to P.W.10 and confined the accused in the home and thereafter, lodged a complaint before the police and F.I.R was registered and the knife and accused were handed over to the police.

14. On perusal of the evidence of P.W.1 and P.W.2, I find that their evidence is clear and cogent and nothing in the cross-examination elicited to describe their evidence. The presence of the accused A1 to A5 and the act committed by them and the M.O.1 knife, M.O.2 and M.O.3-Bike were clearly identified by the accused P.W.1, P.W.2, P.W.3 and P.W.4 in the trial. Though a point has been raised by the learned counsel for the petitioner that in the absence of any identification parade being conducted before the identification of the accused during the trial is not sustainable. This Court has given its anxious consideration to the said fact and also citations relied upon by them.

15. On the facts and circumstances of the case that the P.W.1, P.W.4 and P.W.5 have over powered all the accused with the aid of the neighbours in the village and caught hold of the accused and all the villagers have taken the accused to the police station and handed over the accused to the police and hence on the facts and circumstances of the case, I find that non conducting of the identification parade is not fatal to the prosecution case. Since all the accused was not arrested by the police after investigation as could happened in regular criminal cases. Here in the instant case, when the accused have trying to trespass into the house by house breaking and threatened the A1 to open the door due to the swept action by the P.W.2 from the inside the house in calling their relatives and the persons in the street and village came to the spot and over powered the accused and caught them red-hand and handed over the same and hence on the factual background since the accused has been caught red and hold by the witnesses themselves and being produced before the police station, non conducting of the identification parade does not affect the credibility of the witnesses nor the prosecution theory.

16. On an combine reading of the evidence of P.W.1, P.W.2, I find that they are natural and there is no artificiality in their evidence. P.W.3 who is the wife of the P.W.1 has clearly stated that the presence of the accused the act of the accused by threatened the P.W.1 at a knife point were clear and cogent and duly collaborates the prosecution witnesses, P.W.1, P.W.2, P.W.4 and P.W.5 who are residence in the nearby at have nearly spoken about the presence of the accused as well as the act committed by them.



17. It remains to be stated that the accused are belonged to Jalaganda area and why they are went to the Kannandheri village and there is no previous enmity, between P.W.1 and P.W.4 accused and therefore no crudge to grind against this accused also assumes significance. Furthermore there is nothing in the cross-examination of the private prosecution witnesses P.W.1 to P.W.5 as to the presence of the accused at the scene of the crime. Both the Courts below have rightly appreciated the evidence of P.W.1 to P.W.5 and come to the conclusion that the charges against all the accused A2 to A5 were proved beyond reasonable doubt. A1 Manikandan alias Mani having died on 26.12.2017, the charge against him stands abated.

18. Taking into consideration that in the criminal revision petition, while exercising the divisional jurisdiction, the Court cannot re-appreciate the entire evidence having regard to the various submissions made by the respective counsel for the respective revision petitioner, this Court has gone through the evidence of P.W.1 to P.W.5 to the dismay. I find that the finding rendered by both the Courts below does not suffer from any irregularity or illegality warranting any interference in the criminal revisional jurisdiction, since there is no perversity in appreciation of the evidence by the Courts below.

19. On an combined reading of the private prosecution witnesses and the material placed before the Court, both the Courts below have rightly come to the conclusion that the specific charges levelled against the revision petitioners have proved beyond reasonable doubt and accordingly various contention raised on behalf of the petitioners stands rejected and the conviction passed by both the Courts below are sustainable in law and the sentence awarded is also found to be inconsumerate with proven charges and the revision petition is devoid of merits.

20. Accordingly, this Criminal Revision Petition is dismissed and the conviction and sentence passed by the trial Court as modified by the Lower Appellate Court is hereby confirmed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional Sessions Judge, Salem.

2.The Assistant Sessions Judge, Sankari.

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.Philip Ravindran Jesudoss, Advocate, S.R.No.28855

Crl.R.C.No.1062 of 2018

GPL (CO)
CB(20/07/2021)