



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.R.C.No.1450 of 2016

Velmurugan

... Petitioner/Accused

Versus

The State

Rep. by Inspector of Police,
Erode Taluk Police Station,
Erode District.

(Crime No.144/2015)

... Respondent/Complainant

PRAYER: Petition filed under Sections 397 & 401 of the Criminal Procedure Code, to call for the records on the file of the learned 1st Additional Sessions Judge, Erode, Erode District in Crl.A.No.82/2016 dated 02.09.2016 and confirming the Judgment and sentence passed in C.C.No.37/2015 dated 16.03.2016 on the file of the learned Judicial Magistrate, No.I, Erode, Erode District, and to set aside the Judgment dated 02.09.2016.

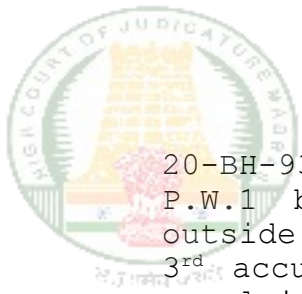
For Petitioner : Ms.P.Selvi, Legal Aid Counsel

For Respondent : Mr.A.Gopinath,
Government Advocate (crl.side)

O R D E R

This Criminal Revision Case has been filed, challenging the judgment made in Crl.A.No.82/2016 dated 02.09.2016 by the learned 1st Additional Sessions Judge, Erode, Erode District, confirming the Judgment and sentence passed in C.C.No.37/2015 dated 16.03.2016 on the file of the learned Judicial Magistrate, No.I, Erode, Erode District.

2.The case of the prosecution is that on 23.4.2015 at about 03.15 a.m., when P.W.1 along with his wife-Geetha (P.W.2) and his daughter-Varsha (P.W.10) was sleeping in his house, the accused 1 to 3 came in a motor cycle bearing Registration No.TN-

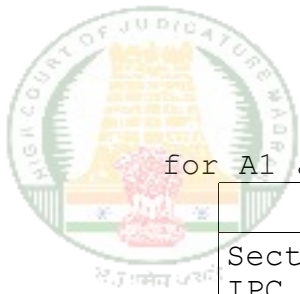


20-BH-9374; the 1st and 2nd accused trespassed inside the house of P.W.1 by break-open the door; the 3rd accused was standing outside the house to watch whether anyone was coming; the 2nd and 3rd accused went inside the house and threatened the de facto complainant-P.W.1, his wife (P.W.2) and daughter (P.W.10); thereafter, they robbed the jewels worth about Rs.2,50,000/- from the bereau, and immediately ran away from the place of occurrence. On the complaint given by P.W.1, a case was registered under Sections 458 and 392 of IPC by the Sub-Inspector of Police (P.W.8), who in turn submitted the FIR to Mr.Kannan, (P.W.11)/ Inspector of Police. P.W.11 took up the case for investigation. He went to the place of occurrence, prepared Ex.P.2-Observation Mahazar; Ex.P.12-Rough Sketch in the presence of the witnesses and also enquired some of the witnesses.

3.On 25.05.2015, at about 04.00 am., when the P.W.11-Inspector of Police was engaged in the vehicle check up, he arrested the accused 1 and 3 and recorded the confession statements given by A1-Ravi and A3-Velmurugan. He also recovered the material objects, M.O's.8 and 9 under the Seizure Mahazar-Ex.P.6. Thereafter, based on the confession statements made by the accused 1 and 3, it is found that they were involved in some other cases also, and properties pertaining to the other case was also recovered in the presence of witnesses. On 28.05.2015, P.W.11-Inspector of Police, arrested A2-Venkatesh at Perumanallur bus stop and recorded his confession statement in the presence of witnesses. He also seized M.O.1 vide Ex.P.8-Seizure Mahazar. After completing the investigation, P.W.11 filed charge sheet against the accused 1 and 2 for the offences under Sections 458 and 392 of IPC and as against the 3rd accused for the offences under Sections 458 and 392 r/w 34 IPC.

4.When the accused were questioned before the Trial Court, they denied the charges as false and hence, the trial was commenced. During the course of trial, on the side of the prosecution, 11 witnesses were examined as PW1 to PW11; 18 documents were marked as Exs.P1 and P18 and 9 Material Objects were marked as M.O's.1 to 9. On the side of the defence, no witness was examined and no document was marked.

5.After completion of trial and on considering the materials available on record, the learned trial Judge found the accused guilty for the offences; convicted and sentenced them as mentioned below:



for A1 and A2:

Offence	Punishment Imposed
Section 458 of IPC	To undergo three years rigorous imprisonment and to pay a fine of Rs.100/- in default SI of three months
Section 392 of IPC	To undergo three years rigorous imprisonment and to pay a fine of Rs.100/- in default SI of three months

for A3:

Offence	Punishment Imposed
Section 458 of IPC	To undergo three years rigorous imprisonment and to pay a fine of Rs.100/- in default SI of three months
Section 392 r/w 34 of IPC	To undergo three years rigorous imprisonment and to pay a fine of Rs.100/- in default SI of three months

6. Aggrieved over the same, the accused 1 and 3 have preferred an appeal in C.A.No.82 of 2016 before the Sessions Court and the same also came to be dismissed by confirming the judgment of the trial Court. Hence, the petitioner/3rd accused has preferred the present Criminal Revision Case.

7. Heard the learned counsel for the revision petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record.

8. Point for consideration:-

"Whether the judgment of the 1st appellate Court made in Crl.A.No.82/2016 dated 02.09.2016 is just and proper?"

9. The revision petitioner before me is the 3rd accused. The 3rd accused is said to be standing outside of the house of P.W.1, at the time of occurrence. So, he could not have been noticed by the defacto complainant or any of his family members. 3rd accused has been implicated in the case only based on the confession statements given by A1 and A2. After the recovery was made from A1 and A2, the present revision petitioner (A3) was implicated in this case and he was arrested subsequently. The learned Trial Judge, while recording the reasons for convicting A3, has stated that his involvement in the offence is clear from the confession statement given by A1 and A2. Except the confession statement, A3 was not identified by any of the witnesses and



therefore, there is no incriminating evidences and circumstances shown against him.

10. Even the learned Trial Judge has observed in his judgment that P.W.1 and 2 may not be aware of the presence of A3 and the involvement of A3 came to light only upon the confession statements given by A1 and A2. Though the said confession might be helpful for investigation to prove the guilt of the accused before the Court, it is a weak piece of evidence only. Further, the P.W.11- Investigation Officer arrested both A1 and A3 on the same day. If the involvement of A3 is revealed only on the basis of the confession given by the co-accused, it is not possible for the Investigation Officer to arrest A3 along with A1. It has been made clear from the evidence of the prosecution that A3 had no direct involvement in the offence and he is said to have been guarding the house by standing outside. No one has identified A3. Even after the arrest of A3, P.W.1, 2 did not know the involvement of A3 in the offence. Even before the confession statement of A1, A3 was arrested along with A1. These contradictory facts revealed from the evidence of prosecution, ought to have been appreciated by the learned Trial Judge in proper perspective in order to give benefit of doubt to A3. Since, A3 has been convicted only based on the confession of the co-accused and there is no other evidence which connects A3 to the crime, I feel that the judgment of the Courts below have to be set aside as against the 3rd accused alone.

11. In the result, the Criminal Revision Case is allowed and the judgment of the learned 1st Additional Sessions Judge, Erode, Erode District, dated 02.09.2016 made in CrI.A.No.82/2016 is set aside.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

- 1) The I Additional Sessions Judge,
Erode, Erode District.
- 2) The Judicial Magistrate, No.1,
Erode, Erode District.



3) The Inspector of Police,
Erode Taluk Police Station,
Erode District. (Crime No.144/2015)

4) The Public Prosecutor,
High Court of Madras.

Order made in
Crl.R.C.No.1450 of 2016

AK-II (CO)
SU(10/02/2022)