



BAIL SLIP

The Appellant /Accused Thiru.Kutty @ Rajeshkannan S/o.Kandasamy, is released on bail order dated 25/10/2017 made in Crl.MP(MD) No.5519 of 2017 in Crl.A(MD).No.498 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 07.07.2021

ORDER PRONOUNCED : 29.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.R.C. (MD) No.498 of 2017

Kutty @ Rajeshkannan ... Petitioner/ Appellant/Accused
vs.

The State
By the Inspector of Police,
Velliyanai Police Station,
Karur District. ... Respondent/ Respondent/ Complainant

PRAYER:- This Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the judgment dated 31.01.2017 made in C.A.No.5 of 2017 by the Fast Track Mahila Court, Karur, confirming the judgment dated 09.01.2017 made in C.C.No.180 of 2010 by the Judicial Magistrate No.II, Karur.

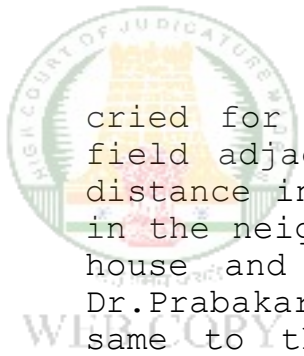
For Petitioner : Mr.V.Sukumar
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is filed to set aside the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Karur in C.A.No.5 of 2017, dated 31.01.2017, confirming the judgment passed by the learned Judicial Magistrate No.II, Karur in C.C.No.180 of 2010, dated 09.01.2017.

2.The facts, which are relevant for consideration in this Revision as per the prosecution case, are as follows:-

2.1.P.W-1-Nallammal, aged about more than 70 years and is a permanent resident of Kunnur Village, Karur Taluk, Karur District. On 29.01.2010 by around 11.00 O' clock when she was alone at home, the Accused Revision Petitioner herein came to her house and sought water to drink. She brought water. After drinking water, he had returned the vessel container to P.W-1. While taking back the container from the Revision Petitioner, P.W-1 was hit on the face by the Revision Petitioner/Accused. By the strong attack, she lost composure, lost balance and fell down. In the meanwhile, the Revision Petitioner/Accused snatched golden mangal sutra from her neck and ran away. By the time, P.W-1 regained consciousness, she



cried for help. Hearing her cries, her husband, who was in the field adjacent to their house, came running and he ran for a few distance in search of the Accused. By the time, message was spread in the neighbourhood. P.W-9-Subramani-grandson of P.W-1 came to her house and took her to Government Hospital, Karur where P.W-12-Dr.Prabakaran examined her and issued Ex.P-5. He also intimated the same to the Police Station concerned. P.W-14 Govindasamy, Sub Inspector of Police, on receipt of intimation from the Government Hospital, Karur went to the Government Hospital and took the oral statement from P.W-1 who was undergoing treatment in the Government Hospital. On return to the Vellianai Police Station, he had registered FIR in Crime No.71 of 2010 under Ex.P-6 for the offences under Sections 323 and 380 of I.P.C. He had sent the copy of the original FIR under Ex.P-6 and the original complaint under Ex.P-3 to the Court of the learned Judicial Magistrate and placed the copies to the Inspector of Police and other higher officials of the Police Department. On receipt of the copy of FIR and complaint, P.W-15-Investigation Officer proceeded with the investigation promptly. P.W-14-Sub Inspector of Police had registered the FIR and proceeded with the investigation and recorded their statement. Subsequently, the Investigation Officer took up the investigation. He had examined the witnesses. Since the witnesses stated the same facts as was narrated to P.W-14, P.W-15 had not recorded the statements. He had addressed the learned Chief Judicial Magistrate, Karur, to nominate a Judicial Magistrate to proceed with a Test Identification Parade. Accordingly, the learned Chief Judicial Magistrate, Karur, had nominated learned Judicial Magistrate No.2 P.W-13. He had conducted the Test Identification Parade in the Central Jail, Trichy and sent the report of the Test Identification Parade to the Investigation Officer to proceed further. After receiving the copy of the Test Identification Parade report, the Investigation Officer had recorded the statement of the learned Judicial Magistrate-2, Karur and P.W-12-Doctor who treated the victim. After completion of the investigation, he had filed the final report of the investigation before the Court of the learned Judicial Magistrate No.2, Karur.

2.2.On filing of the final report by the Inspector of Police, Vellianai Police Station, the learned Judicial Magistrate No.2, Karur, had issued summons to the Accused and taken cognizance of offence under Section 173 of Cr.P.C. On appearance of the Accused, copies were furnished under Section 207 of Cr.P.C. Charges were framed against the Accused and questioned about the charges. Since the Accused claimed to be tried, trial was ordered.

2.3.In the trial, the prosecution had examined witnesses P.W-1 to P.W-15 and marked documents Ex.P-1 to Ex.P-9 and M.O-1.

2.4.On assessment of the evidence, incriminating portion of the prosecution witness P.W-1 to P.W-15 were put to the Accused under the proceedings under Section 313 of Cr.P.C. The Accused denied the evidence available against him and the Accused had not examined any



2.5.Arguments were heard from the prosecution and the defence and the learned Judicial Magistrate No.2, Karur, on appreciation of evidence had arrived at a just conclusion that the Accused had committed the offence punishable under Section 394 of I.P.C. Aggrieved by the judgment of conviction and sentence of imprisonment, the Accused before the learned Judicial Magistrate No.2, had preferred the appeal before the Court of the learned Sessions Judge, Karur. The learned Sessions Judge, Karur, on analysing the entire materials available before the learned Judicial Magistrate No.2, Karur, had re-assessed the evidence and rejected the contention of the appellant/Accused and confirmed the finding of guilt recorded by the learned Judicial Magistrate No.2, Karur.

3.Aggrieved by the dismissal of the criminal appeal, the appellant before the learned Sessions Judge, Fast Track Mahila Court, Karur, had filed this Criminal Revision Case.

4.Heard Mr.V.Sukumar, learned Counsel for the Revision Petitioner and Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) appearing for the respondent and perused the judgment of the learned Trial Judge/learned Judicial Magistrate No.2, Karur and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Karur, in Crl.A.No.5 of 2017 dated 31.01.2017.

5.The learned Counsel for the Accused/Revision Petitioner submitted that the circumstances not connected with the Accused with the crime since P.W-4 deposed that he had seen P.W-7 with Accused while both were talking then P.W-7 informed him that the Accused is doing catering job but in his deposition before Court he denied. In support of his contention the learned Counsel for the Petitioner/Accused had relied on the decision of the Hon'ble Supreme Court in the case of **Balwinder Singh -vs- State of Punjab** reported in **AIR 1996 SC 607**.

6.The learned Counsel for the Petitioner/Accused further submitted that while the learned Judicial Magistrate conducted the Test Identification Parade photographed the Accused in police custody and the witnesses have stated that they have all seen the Petitioner/Accused in the police station prior to the Test Identification Parade. Hence, the Test Identification Parade is inadmissible in law. In support of his contention, he relied upon the judgment of this Court in **Krishnaraju Babu -vs- State** reported in **2003 (7) MLJ (Cri) 4489**. He further submitted that as per the prosecution, the recovery was not done by the police based on confession of the Accused but the pledged receipt is not produced before the Court. P.W-10 admitted the pledging of the neck chain of the victim. However, in the receipt the name of his wife is shown. Therefore, he submitted that the recovery had not been done from the Petitioner/Accused. In support of his submission, he relied upon a



decision of this Court in the case of **Thiagarajan vs State represented by the Inspector**. He also relied upon the decision of the Hon'ble Supreme Court in the case of **Chakali and others -vs- State of Andhra Pradesh** reported in **2010 (2) SCC 72** wherein it has been held that the deposition of close relatives cannot be discarded merely because they are relatives but their evidence has to be considered with due care and caution. In this case, most of the prosecution witnesses are interested witnesses and their evidence has to be considered with due care and caution.

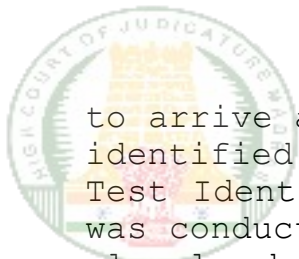
7.The above said rulings are not applicable to the facts in this case for the following reasons. The witnesses P.W-2 to P.W-9 are the relatives or neighbours of P.W-1 which is true. But the Hon'ble Supreme Court had laid down the rulings that the evidence of interested witnesses need not be rejected. The trial Court has to assess the evidence with caution. Here, in this case, P.W-2 is the husband of P.W-1. P.W-3 to P.W-7 are relatives. They had all admitted in their cross examination that they had not seen the occurrence. P.W-1 was attacked by the Revision Petitioner/Accused under the guise of seeking water to drink and P.W-1 had offered water. The Accused drank the water and after giving back the vessel, he had hit her on the face, which caused her shock and due to which she lost balance and fell down. Using that opportunity, the Accused/Revision Petitioner is alleged to have snatched her mangala sutra weighing roughly 7 sovereigns and ran away. After she regained consciousness, she cried for help and her husband P.W-2 came running. By the time he came, the Accused had already left the scene of occurrence. Anyhow, P.W-9 took her to Government Hospital, Karur, where the Doctor had referred her for further treatment to Trichy Headquarters Medical College Hospital. Since she did not go to Trichy Medical College Hospital, P.W-12 was unable to give report regarding treatment. Anyhow, he had issued Wound Certificate and final opinion was not given at the earliest point of time. He had examined P.W-1. Therefore, there is sufficient materials to prove the evidence of P.W-1. The fact that P.W-2 to P.W-9 went in search of the Accused is also true. They had not seen the Accused. But from the hospital the offence was intimated to P.W-14 when he was working as Sub Inspector of Police. On receipt of intimation from the Government Hospital, Karur, he proceeded to the Government Hospital and took down the oral complaint from the victim P.W-1. He returned to the Police Station and based on which, he registered it as Crime No.71/2010.

8.After registering the FIR, a copy of the FIR was sent to the Inspector of Police, who had taken up the investigation. Promptly proceeded to the house of P.W-1 and prepared Rough Sketch under Ex.P-7, Observation Mahazar under Ex.P-2 in the presence of witnesses P.W-8 and one Veluchamy. He had also addressed the learned Chief Judicial Magistrate, Karur to nominate a Judicial Magistrate to conduct the Test Identification Parade.



9.P.W-15-Inspector of Police had arrested the Accused and the Accused had given confession before the witness P.W-11 and one Sivalingam that the mangal sutra snatched from P.W-1 was handed over to P.W-10 who was residing in the opposite house. P.W-10 had pledged it on the request of the Accused with the jeweller and obtained amount of Rs.50,000/- which was handed over to the Accused. The Accused after having been arrested was taken to the house of P.W-10 from where the statement of P.W-10 was recorded. P.W-10 had accompanied the Investigation Officer to the jewellery shop from where the ornament was seized. Since the Investigation Officer wanted to satisfy himself that the investigation is proceeding in proper path, he had summoned the complainants to police station to identify the jewels. At that time they had seen the Accused but that will not help the prosecution to prove the charge against the Accused. Therefore, the Investigation Officer had sought the help of the learned Chief Judicial Magistrate to conduct Test Identification Parade. Accordingly, Test Identification Parade was conducted and P.W-1 had identified him. Even if Test Identification Parade was not conducted due to inadvertence and the witnesses had identified the Accused in Court, that will be sufficient to convict the Accused. Therefore, P.W-1 had properly identified the Accused. Even for the sake of arguments, if the contention of the Accused that the witnesses had identified the Accused based on their interaction in the police station, is accepted, the same does not gain weight as P.W-1 had clearly identified the Accused.

10.P.W.1 being an illiterate or semi-literate woman. She deposed that the chain snatched from her neck is weighed about 6½ sovereigns whereas the chain seized from the Accused is 7 sovereigns. That does not make much difference. P.W-1 herself had identified the chain recovered from the Accused. There is evidence regarding the attack through the medical evidence. There is evidence regarding recovery of the jewel snatched from P.W-1 through P.W-10 and another evidence. Therefore, the reliance placed upon by the learned Counsel for the Revision Petitioner that Test Identification Parade was not foolproof and therefore, Test Identification Parade has to be rejected. Even if it is rejected, P.W-1 had clearly identified the Accused in Court. That will be sufficient to convict the Accused. There was a recovery made in the presence of witnesses and through P.W-10 who had pledged it. Therefore, the argument of the learned Counsel for the Revision Petitioner/Accused that the recovery has not been done from the Accused, also is rejected. The reliance placed on the reported rulings by the learned Counsel for the Accused/Revision Petitioner does not appeal to the Court as there is settled proposition of law that the advantage of benefit of shoddy investigation shall not be extended to the Accused if the victim of crime deposed evidence in Court which inspires confidence of Court as it is natural and cogent and it does not require corroboration. Here the fact of injury mark on the face of P.W-1 through the evidence of Dr.PW-12 is sufficient

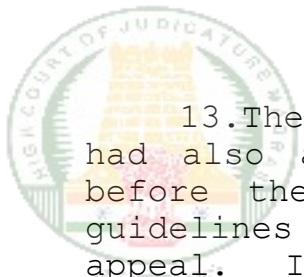


to arrive at a conclusion that the occurrence took place. P.W-1 had identified the Accused in Court. That is be sufficient, even if Test Identification Parade is rejected. Test Identification Parade was conducted by the learned Judicial Magistrate - P.W-13 and he had clearly deposed regarding the procedure adopted in identifying the Accused. The learned Counsel for the Revision Petitioner/Accused stated that the Accused was taken photograph in the Police Station based on which the witnesses had identified him. If the Test Identification Parade is rejected, still there is evidence that P.W-1 identified the Accused in Court. Therefore, the contention of the learned Counsel for the Revision Petitioner regarding Test Identification Parade, is rejected. Likewise, Hon'ble Supreme Court in **Vadivelu Thevar -vs- State of Madras** reported in **AIR 1957 SC 614** has held that if the evidence of the victim of crime inspires confidence of the trial Judge, the Trial Judge can convict the Accused. The Hon'ble Supreme Court in yet another case in **Anirudh -vs- Sate of Gujarat** reported in **(1995) 5 SCC 302** held that for each and every case there need not be a corroboration as witnesses are not willing to come and support the prosecution case. Even the evidence of those who support the prosecution case are rejected on the ground that either the witnesses are related witnesses or interested witnesses, the Court shall approach the evidence with due caution. Here even assuming, without admitting that the evidence of P.W-2 to P.W-9 is rejected, still the evidence of P.W-1 alone, the injured victim, identifying the Accused adds strength to the case of the Prosecution. Therefore, the arguments of the learned Counsel for the Revision Petitioner is rejected. As the confession of the Revision Petitioner/Accused leading to recovery through P.W-10 is corroborated, the contention of the learned Counsel for the Petitioner is also rejected. The rulings of the Hon'ble Supreme Court relied upon by the learned Counsel for the Petitioner/Accused is also rejected.

11.Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Karur in C.A.No.5 of 2017, dated 31.01.2017, confirming the judgment passed by the learned Judicial Magistrate No.II, Karur in C.C.No.180 of 2010, dated 09.01.2017 are to be set aside, as perverse and the Petitioner is to be acquitted?

12.On perusal of the judgment of the learned Trial Judge/learned Judicial Magistrate No.2, Karur, it is found that the learned Judicial Magistrate No.2 had properly assessed the evidence available before him and arrived at a logical conclusion that the Accused before the learned Judicial Magistrate No.2 alone had committed the offence attracting the provisions under Section 394 of IPC.



13.The learned Sessions Judge, Fast Track Mahila Court, Karur, had also as Appellate Judge re-assessed the materials available before the learned Judicial Magistrate No.2, Karur as per the guidelines of the Hon'ble Supreme Court regarding the dismissal of appeal. If the trial Court had assessed the evidence properly as per the provisions of Indian Evidence Act and arrived at a just conclusion, either regarding the guilt or regarding acquittal, the Appellate Judge even though has the powers and discretion to re-assess the entire materials available before the learned Trial Judge shall not interfere with the finding of fact arrived at by the learned Trial Judge, even though on the same set of evidence, the Appellate Judge may arrive at a just opposite conclusion. This is because the learned Trial Judge has the advantage of observing the demeanour of witnesses. This advantage is not available to the Appellate Judge. Therefore, the finding of fact whether regarding guilt of the Accused or whether regarding acquittal of the Accused shall not be interfered with by the Appellate Judge. The Appellate Judge does not have the benefit of observing the demeanour of the witnesses. Therefore, the finding recorded by the learned trial Judge gains more weightage.

14.As per the reported ruling of the Hon'ble Supreme Court ***State represented by the Drugs Inspector vs Manimaran***, reported in ***(2019) 13 SCC 670***, the Revision Court does not have the discretion to consider or re-appreciate the evidence that was available before the trial Court. The Appellate Court alone has the right or discretion to consider all the materials that were available before the learned trial Judge. The Revision Court even though High Court when exercising its power of Revision does not have the discretion to analyze and re-assess the entire materials placed before the learned trial Judge. Only if the finding of either the trial Judge or the appellate Judge is perverse, the High Court as Revision Court can exercise its discretion. The discretion exercised by the Revision Court is a narrow compass. Therefore, the Revision Court cannot re-assess the evidence, particularly, when both the learned Trial Judge and the learned Appellate Judge had given concurrent findings.

15.In the light of the above discussion, the argument of the learned Counsel for the Revision Petitioner that the finding of fact arrived at by the learned Judicial Magistrate, Karur recording conviction against the Accused is perverse and it has to be set aside, cannot at all be accepted.

16.The point for consideration is answered in favour of the prosecution/respondent and against the Petitioner. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Karur in C.A.No.5 of 2017, dated 31.01.2017, confirming the judgment passed by the learned Judicial Magistrate No.II, Karur in C.C.No.180 of 2010, dated 09.01.2017, is found not perverse and does not warrant interference by this Court.



In the result, this Criminal Revision Case is dismissed.

The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Karur, dated 31.01.2017 in C.A.No.05 of 2017, confirming the judgment passed by the learned Judicial Magistrate No.II, Karur in C.C.No.180 of 2010 dated 09.01.2017 is confirmed. **The learned Judicial Magistrate No.II, Karur, is directed to issue warrant to secure the Petitioner/Accused to undergo the remaining period of sentence and to collect the fine from the Accused.** The period of detention already undergone by the Petitioner/Accused is set off under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar()

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

SRM

To

- 1.The Sessions Judge,
Mahila Fast Track Court,
Karur.
- 2.The Judicial Magistrate No.II,
Karur.
- 3 do through the Chief Judicial Magistrate, Karur District.
- 4 The Inspector of Police,
Velliyanai Police Station,
Karur District.
- 5 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:
The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

**Order made in
Crl.R.C. (MD) No.498 of 2017
29.10.2021**

MK/01.03.2022/8P/7C