

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.75 of 2019

and

Crl.M.P.Nos.727, 728 & 732 of 2019

S.Rameshkumar

... Petitioner

Versus

The State represented by
The Inspector of Police,
Dharapuram Police Station,
Tirupur District,
Crime No.591 of 2013

... Respondent

Prayer: Criminal Revision Case filed under Section 397 & 401 Cr.P.C, to set aside the judgment passed by the III Additional District and Sessions Judge, Tirupur in C.A.No.37 of 2014, dated 28.11.2018, modifying the judgment passed by the Judicial Magistrate, Dharapuram Tirupur District on 16.06.2014 in C.C.No.386 of 2013 and allow the revision petition.

For Petitioner : Mrs.Girija
Legal Aid Counsel

For Respondent : Mr.S.Vinoth Kumar,
Government Advocate (Crl.Side)
for Public Prosecutor

O R D E R

This Criminal Revision Case is filed to set aside the judgment passed by the III Additional District and Sessions Judge, Tiruppur, in C.A.No.37 of 2014, dated 28.11.2018, modifying the judgment passed by the Judicial Magistrate, Dharapuram, Tirupur District, on 16.06.2014, in C.C.No.386 of 2013 and allow the revision petition.

2.The accused no.3 in Crime No.591 of 2013 is the petitioner before this Court. The gist of the case of the prosecution in the instant case is that on 24.10.2013 at about 6.15 p.m. in the evening when PW1 and PW2 were returning home from their evening walk, the first accused had tried to snatch her Thali chain.

PW1 caught hold of her Thali and therefore, the hook got widened and the chain attached to the Thali was taken away by the first accused and PW2, who was the Sub Inspector of police and the husband of PW1 gave a chase to the first accused, he ran and boarded in a three wheeler goods auto, which was standing in some distance and the accused 2 and 3 were standing near the auto, got into the vehicle and all the three of them went away. PW2 noted down the registration number of the auto and immediately, he reported to the police, upon which, the auto was caught by the police patrol by PW5, upon which, the accused were brought to the police station and A1 had given the chain from his pocket and therefore, upon recovery, the police had filed a charge sheet, which was taken on file in C.C.No.386 of 2013 for charges under Section 392 IPC.

3.Before the trial Court, the defacto complainant, namely, Mary Jhansi was examined as PW1 and her husband Paulraj was examined as PW2. PWs 3 and 4 were observation mahazar witnesses, PW5 is the Sub Inspector of Police who was conducting the police patrol, in which, he caught the auto and brought them to the police station. PW6 is the Special Sub Inspector, who registered the FIR, PW7 is the Investigation officer.

4.The prosecution has also marked Exs.P1 to P8 and also produced the chain recovered as M.O.1 and the auto seized as M.O.2 before the trial Court. There was no evidence let in on behalf of the defence.

5.The trial Court therefore considered the evidence on record and proceeded to hear the learned Public Prosecutor for the petitioner and the learned counsel appearing on behalf of the accused and found the accused guilty for the offences under Section 392 IPC and convicted all the three accused for the offences under Section 392 r/w 34 IPC and imposed a sentence of three years rigorous imprisonment and fine of Rs.1,000/- each, in default to pay the fine, to undergo three months simple imprisonment for A1 and A2 and in respect of A3, a fine of Rs.100/- was imposed while imposing the rigorous imprisonment for a period of three years.

6.Aggrieved by the same, all the three accused filed appeals in Crl.A.Nos.28, 33 and 37 of 2014, before the III Additional District and Sessions Court. The Appellate Court found that the evidence on record did not prove all the ingredients for the offences under Section 392 IPC as there was no evidence on record to suggest that there was any voluntary hurt caused or there was any threat of life or wrongful restraint and therefore held that however, in view of Section 222 Cr.P.C., the accused can be punished for a minor offence even though charge has been framed for a major offence of the same genus i.e, offences under

Section 379 and Section 379 r/w 34 IPC and as far as the appellant is concerned, considering the fact that he had faced the trial as an accused in jail, modified the punishment as two years rigorous imprisonment and imposed a fine of Rs.100/- and in default to pay the fine amount, to undergo simple imprisonment for another one month.

7. Aggrieved by the same, the present revision is laid before this Court.

8. When the matter came up for hearing, the learned counsel originally appeared for the petitioner reported no instruction. Therefore, this Court is pleased to appoint Mrs. Girija as legal aid counsel in this matter.

9. Heard Mrs. Girija, legal aid counsel for the petitioner and the learned Government Advocate (Crl. Side) for the prosecution side and perused the material records in this case.

10. In this case, on a perusal of the entire evidence on record, it is clear that except PWs 1 and 2 who had seen the first accused snatching the chain and running away, there is no other evidence identifying the third accused either before Court or by way of an identification parade. There is no evidence except for PWs 1 and 2 and the observation mahazar witnesses and PW5 police patrol Sub Inspector and PW6 the Special Sub Inspector, who registered the FIR, examined in this case. Therefore, there is no iota of evidence to prove the charge under Section 34 IPC or even the presence of the accused in the scene of occurrence. Even PW5 in his cross examination has admitted that he did not remember as to who drove the auto or who was the co-passenger in the auto. Therefore, while converting the offence under Section 379 IPC which is only removing the valuable from the possession of the particular person, which admittedly is only done by the first accused in this case, the lower appellate Court omitted to consider that there was no evidence for the involvement of the present petitioner/A3 is concerned. Unless and otherwise a common intention or abetting is proved in the manner known to law, the petitioner before this Court could not be convicted for the alleged offence committed by the first accused. Though Section 34 is charged, absolutely there is no iota of evidence as to what was the relationship between A1, A2 and A3 and what was the common intention, how they planned etc. It is categorically held by the Hon'ble Supreme Court in the case of Abdul Sayed Vs. State of Madhya Pradesh reported in (2010 10 SCC 259) as to the ingredients of Section 34 IPC and how it is to be proved by the prosecution. Therefore, unless the common intention is proved, there is no iota of evidence to connect A3 to the scene of occurrence and therefore, I am of the view that the conviction

as far as the petitioner herein is totally unsustainable and accordingly, the conviction and sentence imposed on the petitioner by the III Additional District and Sessions Judge, Tirupur, in C.A.No.37 of 2014, dated 28.11.2018 for the offences under Section 379 r/w Section 34 IPC is set aside. The accused is acquitted of the charges. Fine amount paid, if any, is ordered to be refunded.

11.Accordingly, the criminal revision is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The III Additional District and Sessions Judge, Tirupur.
- 2.The Judicial Magistrate, Dharapuram, Tirupur District.
- 3.The Inspector of Police,
Dharapuram Police Station,
Tirupur District,
- 4.The Public Prosecutor,
High Court of Madras.
- 5.The Section Officer,
Criminal Section, (Records)
Madras.

Crl.R.C.No.75 of 2019

SKM(CO)
SB(20/07/2022)