



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

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CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Cr1.R.C.No.155 of 2015

1.Tamizharasan
2.Ramu

... Petitioners

Versus

The State of Tamilnadu
Represented by the Sub-Inspector of Police,
Katpadi Police Station,
Vellore.

... Respondent

Prayer : Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the order, dated 27.08.2014 in Criminal Appeal No.154 of 2011 passed by the I Additional District and Sessions Judge, Vellore in S.C.No.296 of 2008, by the learned Assistant Sessions Judge, Vellore.

For Petitioners : Mr.V.Venkatesan,
Legal Aid Counsel

For Respondent : Mr.L.A.J.Selvam
Government Advocate (Criminal Side)

ORDER

This Criminal Revision Case is filed by the petitioners/accused 2 & 3, aggrieved by the Judgment of the Learned Assistant and Sessions Judge, Vellore, dated 05.07.2011 in S.C.No.296 of 2008, thereby, the petitioners/accused, convicted as under:-

i) for the offence under Section 394 of I.P.C., and sentenced for five years Rigorous Imprisonment each and a fine of Rs.5,000/- each and in default of payment of fine, six months Simple Imprisonment to each and;

ii) for the offence under Section 394 read with 397 of I.P.C., and imposing the sentence of seven years Rigorous Imprisonment each and a fine of Rs.5,000/- each and in default of payment of fine, six months Simple Imprisonment each;



And the Judgment dated 27.08.2014 in CrI.A.No.154 of 2011, the learned First Additional District and Sessions Judge, Vellore confirming the conviction for the offence under Section 394 and 394 read with 397 of I.P.C., and sentence of seven years Rigorous Imprisonment and the fine of Rs.5,000/- and in default to undergo Simple Imprisonment for a period of six months to the petitioners/accused imposed by the Trial Court, but, however, since the petitioners/accused were punished for the higher offence of under Section 394 read with 397 I.P.C, and a separate punishment imposed by the Trial Court for the offence under Section 394 was set aside.

2.On 31.01.2008, P.W.1 viz., R.Satish, went to the Katpadi Police Station and lodged a complaint by stating that on 29.01.2008 at about 8:30 p.m., he went to meet his friend Nithin, to ascertain about the lessons, since he was absent from the school for a period of one week. While so, the three accused persons who came from the opposite side in a Hero Honda Splendor Motorcycle intercepted him and one Robinson, who is a school senior to him, showing a knife and threatened him to give whatever money he was having. P.W.1 replied that he did not have any money with him. But, however, Robinson snatched the cell phone and put his hand inside P.W.1's shirt pocket and took away Rs.200/-. After taking away the cell phone and money, he looked at the other two persons, who came along with him, called them Tamilarasan and Ramu and instructed them to hit P.W.1. On his instructions, the third accused viz., Ramu hit P.W.1 on his head with an iron rod and the second accused/Tamilarasan kicked P.W.1 by his legs. He took treatment in a private hospital. Thereafter, after his father came from work, and he lodged the complaint on 31.01.2008.

3.Upon his complaint, one Meena Priya, Sub-Inspector of Police registered a case in Crime No.65 of 2008 under Sections 341, 394 read with 397, 427 and 506(ii) of I.P.C. This case was thereafter taken up for investigation by P.W.10 Arivalagan, the Inspector of Police. After completing the investigation, he laid a final report against the three accused persons proposing them guilty for the offences under Section 394, 394 read with 397, 506(ii) of I.P.C., and Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and the same was taken on file in P.R.C.No.16 of 2008 by the Learned Judicial Magistrate No.3, Vellore. After supplying the copies, the case was committed to the Learned District and Sessions Judge, who in turn, made over the case to the learned Assistant Sessions Judge, Vellore, who took the case on file in S.C.No.296 of 2008 and charges were framed (i) as against the first accused for the offences under Sections 394, 394 read with 397 of I.P.C., and



under Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act; (ii) as against the second accused for the offence under Sections 394, 394 read with 397, and 506(ii) of I.P.C., and; (iii) as against the third accused under Sections 394, 397 read with 394 and 506(ii) of I.P.C., The accused persons denied the charges and stood trial.

4. Thereafter, the prosecution examined P.W.1 to P.W.10 and marked Ex's.P-1 to P-18 and produced M.O-1 to M.O-6. Upon being questioned about the incriminating evidence under adverse circumstances on record under Section 313 of Cr.P.C., the accused denied the same. Thereafter, no oral or documentary evidence was let in on behalf of the defence.

5. The Trial Court thereafter proceeded to hear the Learned Additional Public Prosecutor on behalf of the prosecution and the Learned Counsel for the accused and by Judgment dated 05.07.2011, found that on the basis of the evidence of P.W.1 corroborated by P.W.2; the evidence of the Doctor/ P.W.8 certifying about the injuries to P.W.1; coupled with the recovery of the motorcycle, the cell phone and based on the admissible portion of their confession, concluded that the prosecution has proved the offences under Sections 394, 394 read with 397 of I.P.C., as against the accused and sentenced them as aforesaid.

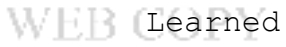
6. Even though all three accused were sentenced by the Trial Court, the first accused Robinson died after the Judgment of the Trial Court and therefore the second accused Tamilarasan and the third accused Ramu alone filed an appeal in CrI.A.No.154 of 2011, before the First Additional District and Sessions Judge, Vellore. By the Judgment dated 27.08.2014, the Lower Appellate Court independently appraised the evidence and found that the evidence of P.W.1/victim, corroborated by P.W.8/Doctor, the evidence of P.W.5, who is friend of the victim, was also coupled with the fact as to the recovery of cell phone, pen-knife, iron rod, motorcycle, Rs.100/- and the cool drinks bottle, held that the prosecution has proved the offences beyond any reasonable doubt. While confirming the conviction for the offence under Section 394 and Section 394 read with 397 of I.P.C., it has set aside the separate punishment for the offence under Section 394 of I.P.C., as the accused are punished for the higher offence of Section 394 read with 397 of I.P.C., therefore, the First Appellate Court, confirmed the punishment of seven years of Rigorous Imprisonment and imposed a fine of Rs.5,000/-, in respect of both the accused no.2 & 3. Aggrieved by the same, the accused no.2 & 3 have filed the present revision before this Court.



7. Pending the revision, now the second accused viz., Tamilarasan, also died on 06.06.2017. Mr.V.Venkatesan, Legal Aid Counsel, who was appearing for both the accused, made submissions for the second accused/Tamilarasan and the third accused/Ramu. Even while making his submissions against the conviction by the Trial Court and the First Appellate Court, the learned counsel submitted that in this case, the evidence of P.W.1, regarding the offence of Section 394 and 394 read with 397 of I.P.C., is unclear. On a reading of the evidence of P.W.1, it is clear that it is the first accused/Robinson, who was a known person to P.W.1 and a senior to him in the school. It may be seen from his evidence that the first accused/Robinson, who had directly asked money from P.W.1. After taking the cell phone and money from P.W.1, thereafter, the first accused/Robinson had instructed the second and third accused to hit the victim/P.W.1. Therefore, from the evidence of P.W.1 itself, it creates a doubt as to whether the entire occurrence happened either for the purpose of extortion or on account of their previous enmity. In this background, the recovery of the cell phone is made from one Stephen, but, however the said Stephen was not proceeded against for receiving of the stolen property.

8. Similarly, the prosecution omitted to examine the crucial witnesses namely, the Doctor of the private hospital, who gave treatment to P.W.1 and also the Sub-Inspector of Police, who registered the First Information Report. In this case, even as per P.W.1, he did not know about the accused/ A2 & A3. But, however, their names are clearly and categorically mentioned in the First Information Report, therefore, the non-examination of the Sub-Inspector of Police, who recorded the First Information Report deprived the accused of the valuable opportunity to cross-examine him. Further, the Learned Counsel for the petitioners/accused would submit that there is a material contradiction in respect of the crucial aspect of hitting of P.W.1 on the head. While P.W.1 had deposed that it is A3, who has hit him on the head with the iron rod, and his friend Nithin, who was examined as P.W.5 and has deposed that it is A2/Tamilarasan, who hit P.W.1 on the head by the iron rod.

9. Similarly, another important material contradiction in the case of the prosecution is that, while the Trial Court as well as the First Appellate Court held that P.W.2's evidence corroborated the evidence of P.W.1, they overlooked into an important contradiction. P.W.1 deposed that he was waylaid and attacked on the way to his friend Nithin's house. While P.W.2 has deposed that P.W.1 informed him that he was attacked on the wayback to home, after visiting his friend Nithin. These



i) Firstly, there is material contradiction between the testimony of P.W.1, who states that it was the third accused, who hit him on the head with an iron rod, whereas, the other eye-witness to this incident viz., P.W.5 has deposed that it was only the second accused, who hit on the head of P.W.1. Coupled with this contradiction, the important fact is that it is only the first accused/Robinson, who was the known person to P.W.1 as well as P.W.5 and no test identification parade was conducted in this case, to identify the accused-A2 & A3 and the roles played by them. Further, P.W.1 in his cross-examination admitted that he named the accused/A2 & A3 in the First Information Report itself based on the statement made by A1 during the commission of the offence, whereby he called the names of A2 & A3 and instructed them to hit P.W.1. Whereas, when he was taken by the Investigating Officer to PW.8/Doctor, P.W.1 has stated that he was hit by unknown persons.



ii) This apart, in this case, as rightly pointed out by the Learned Counsel appearing on behalf of the petitioners, not only the prosecution failed to examine the Doctor of the private hospital, who had given the treatment to P.W.1, and no Accident Register copy either from the private hospital or from the Government hospital has been produced. As a matter of fact, on behalf of the accused, P.W.8 has been cross-examined in this regard and it is clear that in spite of the medico-legal case, no such Accident Register was entered into.

13. Under these circumstances, the delay of two days in reporting the offence to the Police Station also assumes significance. The offence is one of serious nature, where in the middle of the bazaar, P.W.1 is said to have been waylaid, robbed and he was attacked. When the independent witnesses viz., P.W.3/Raghunathan, the shop owner of Kannan store has become hostile. Further the circumstances in this case, that P.W.1 not attending school for one week, going in a borrowed motorbike, Accused No. 1 being a senior to him at School creates a doubt in the case of the prosecution about the Robbery. I'm afraid that the finding of the Trial Court as well as the First Appellate Court in not considering all the above mentioned flaws, in the case of the prosecution would render the finding of guilt as one without considering the material evidence on record and therefore, bordering on perversity. I hold that this is a case for interference in exercise of the powers under revisional jurisdiction. Therefore, I hold that the conviction of the petitioners/accused for the offences under Section 394 and Section 394 read with 397 I.P.C., is unsustainable and acquit them by giving the benefit of doubt.

14. In the result, this Criminal Revision Case is allowed. The Judgment dated 05.07.2011, in S.C.No.296 of 2008 of the Learned Assistant Sessions Judge, Vellore, and the Judgment dated 27.08.2014, in CrI.A.No.154 of 2011 of the First Additional District and Sessions Judge, Vellore are set aside. In as much as the petitioners are concerned and the petitioners are acquitted from the offences and the fine amount, if any, paid by them is ordered to be refunded to them.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

klt



To

1.The I Additional District and Sessions Judge,
Vellore.

2.The Assistant Sessions Judge,
Vellore.

3.The Sub-Inspector of Police,
Katpadi Police Station, Vellore.

4.The Public Prosecutor,
High Court of Madras.

Cr1.R.C.No.155 of 2015

PL(CO)
GN(18/02/2022)