



Bail Slip

The Petitioner/Accused namely Vinesh S/o.Gunaseelan was directed to be released on bail as per order of this Court dated 22.07.2019 and made in CrI.M.P.No.8028 of 2019 in CrI.R.C.No.595 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.09.2021

Pronounced on : 31.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.595 of 2019

Vinesh
S/o.Gunaseelan

... Petitioner

Vs

The Inspector of Police,
M-3 Kovilpalayam Police Station,
Coimbatore.
(In Crime No.99 of 2016)

... Respondent

PRAYER: Criminal Revision case filed under Article 397 r/w 401 of Criminal Procedure Code, to set aside the judgment dated 22.04.2019 passed by the I Additional District Cum Session Court, Coimbatore in C.A.No.78 of 2019 confirming the judgment dated 07.02.2019 passed in C.C.No.380 of 2016 by the Judicial Magistrate No.II, Coimbatore and to acquit the petitioner.

For Petitioner : Mr.R.Singaravelan
Senior Counsel for
Mr.V.L.AkShai Sajin Kumar

For Respondent : Mr.S.Sugendran
Government Advocate(CrI.Side)

O R D E R

This Criminal Revision Case has been filed to set aside the judgment dated 22.04.2019 passed by the I Additional District Cum Session Court, Coimbatore in C.A.No.78 of 2019 confirming the judgment dated 07.02.2019 passed in C.C.No.380 of 2016 by the Judicial Magistrate No.II, Coimbatore and to acquit the petitioner.



2. The respondent police registered a case against the petitioner and one other for the offences punishable under Section 392 IPC in Crime No.99 of 2016 and the respondent police investigated the matter and laid the charge sheet before the Judicial Magistrate No.II, Coimbatore. The Judicial Magistrate has taken the charge sheet on file in C.C.No.380 of 2016. After completing the formalities, framed the charges against both the accused for the offence under Section 392 IPC.

3. In order to substantiate the case of the prosecution, during the trial, on the side of the prosecution, 6 witnesses were examined as P.W.1 to P.W.6 and 7 documents were marked as Exs.P1 to P7 and no material object was marked.

4. After completing the examination of the prosecution witnesses, all the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the petitioner by questioning under Section 313 Cr.P.C, but they denied the same as false and pleaded not guilty. On the side of the defence, no oral evidence was let in and no document was marked.

5. On completion of trial and on hearing the arguments advanced on either side, the trial Court perused the materials and found guilty of the accused for the offence under Section 392 IPC and the petitioner was convicted to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.2000/- in default, to undergo simple imprisonment for one month. Challenging the said order of conviction and sentence, the revision petitioner/A2 filed an appeal before the Principal District and Sessions Judge, Coimbatore. The learned Principal District and Sessions Judge, had taken the appeal on file in C.A.No.78 of 2019 and made over the appeal to the I Additional District and Sessions Judge, Coimbatore, for disposal.

6. The learned I Additional District and Sessions Judge after receiving the records and hearing the arguments advanced on either side had dismissed the appeal by confirming the judgment of the learned Judicial Magistrate No.II, Coimbatore. Challenging the said judgment of dismissal passed by the learned I Additional District and Sessions Judge, Coimbatore, the second accused has filed this present revision petition before this Court.

7. The case of the prosecution is that on 13.04.2016 at about 6 p.m., both the accused approached P.W.3 in a two wheeler, in the guise of seeking address and when P.W.3 was giving reply, the first accused snatched her chain and handed over the same to the petitioner herein/second accused and they sped away from the spot. P.W.3 informed the said occurrence to



P.W.1 on 14.04.2016 and the case was registered on the same day based on the complaint given by P.W.1. On 15.04.2016 at about 11.15 a.m., when the investigating officer involved in routine vehicle check up, they arrested both the accused and recovered the gold chain and recorded the confession statements from them. After completing the investigation, the respondent police filed a charge sheet before the learned Judicial Magistrate No.II, Coimbatore and after completing the trial, the learned Judicial Magistrate convicted both accused for the offence under Section 392 IPC. Challenging the same, the petitioner filed an appeal before the I Additional District and Sessions Judge, Coimbatore and the same was also dismissed. Hence, the petitioner filed this revision case before this Court.

8. The learned Senior Counsel appearing for the revision petitioner submitted that a false case has been foisted against the petitioner and no recovery has been effected from the revision petitioner and the eyewitnesses have not identified the accused before the trial Court during trial and chain was intact. He further submitted that P.W.3 and P.W.4 had not identified the accused and also submitted that the petitioner was not involved in any other case and he is the first offender and he is teen age boy. He would further submit that P.W.1 is not an eyewitness and the case was registered only on 15.04.2016 and the recovery is also made on the very same day and therefore, the judgment of the I Additional District and Sessions Court is liable to be set aside and the petitioner is liable to be set at liberty from the case and prayed to allow this petition.

9. The learned Government Advocate (Crl. Side) would submit that P.W.3 is the old lady and when she was walking on the road, the petitioner and other accused by using the two wheeler, snatched the chain from P.W.3 and ran away from the place of occurrence. The occurrence took place on 13.04.2016 at about 6 p.m. Since P.W.3 is the old lady and she was living along with her son and on the date of occurrence i.e on 13.04.2016, her son was out of station and he came only on the next day, for which, P.W.3 has informed the occurrence to her son only on 14.04.2016. On 15.04.2016 at about 11.15 a.m, when the police involved in routine vehicle check up, they arrested the accused persons and recorded the confession statements from them and also recovered the stolen chain under recovery mahazar.

10. The delay has been properly explained and P.W.3 and P.W.4 have not identified the accused before the trial Court while recording the evidence and also given a reason for not identifying the accused. Since P.W.3 is the old lady and occurrence took place at about 6 p.m., one cannot expect that the lady after 6 o'clock should go to Police Station and lodge a



complaint. P.W.3 was residing with her son and at the time of occurrence, her son was out of station. On the next day of occurrence, her son came to the house and P.W.3 informed the same to her son and thereafter, he preferred the complaint. Therefore, the delay in filing the complaint has been properly explained and the delay is not fatal to the case of the prosecution.

11. The other contention raised by the petitioner is that P.W.3 is not identifying the accused, during the trial. Both the Court below have given a reason that the incident had happened in a fraction of moment unexpectedly and A.1 snatched the chain from P.W.3 and sped away from the spot. P.W.3 is the old lady aged about 50 plus. The occurrence took place in an unexpected manner. Therefore, mere not identifying the accused before the Court during the trial is also not fatal to the case of the prosecution.

12. P.W.5 has clearly stated about the recovery of chain and also the arrest of the accused. The evidence P.W.1 to P.W.3 clearly stated that the snatched chain belonged to P.W.3. P.W.4 has clearly stated that the chain was recovered from the accused and P.W.6, who is the investigating officer also stated that while involving in the routine check up and at that time, they intercepted both the accused and they voluntarily have given confession and also handed over the chain and the same was recovered under mahazar. Therefore, the prosecution clearly proved beyond reasonable doubt and both the Courts below appreciated the evidence and convicted the accused and there is no merit in this case. Therefore, the Criminal Revision Case is liable to be dismissed.

13. Heard both sides and perused the materials available on records.

14. The specific case of the prosecution is that the revision petitioner/A.2 along with A1 travelled in a two wheeler and under the guise of getting address from the P.W.3, A1 snatched the chain from P.W.3 and handed it over to the revision petitioner/A.2 and immediately left from the occurrence place. Thereafter, the case was registered in Crime No.99 of 2016, for the offence under Section 392 IPC against the petitioner and one another and during the course of investigation, the chain was recovered from the accused and they were arrested.

15. From the evidence of P.W.1 to P.W.3, it is clearly seen that the accused snatched the chain of P.W.3 and the evidence of P.W.5 clearly shows that on 15.04.2016, when the police involved in the routine check up, at that time, both the accused were coming in a two wheeler and after seeing the police, they



tried to escape from the place. The police intercepted them and at that time, they have voluntarily given confession statements before the investigating officers and handed over the chain, which is admissible in evidence. Therefore, the prosecution has proved beyond reasonable doubt and the trial Court appreciated the entire evidence and gave a finding that the revision petitioner/A.2 was guilty and there is no merit in this revision case and hence, this revision is liable to be dismissed.

16. As per the submission made by the learned Senior Counsel appearing for the revision petitioner that the petitioner is the first offender and this Court called for the report from the Probation Officer, Coimbatore regarding the conduct and antecedents of the revision petitioner/A.2.

17. The Probation Officer has filed a report before this Court, wherein, the revision petitioner/A.2 stated that he was not aware of the A.1 and he is an unknown person to him and only when he took lift from A.1, he snatched the chain from P.W.3. But, the evidence of P.W.3 clearly shows that at the time of occurrence, both the accused together travelled in a two wheeler.

18. The statement of the revision petitioner before the Probation Officer is not acceptable. In his statement made before the Probation Officer, he has stated that first accused is not known to him. However, the evidence of P.W.4 clearly shows that even on 15.04.2016 also, both together came in the two wheeler, whereas the occurrence took place on 13.04.2016. In order to escape from the clutches of law, he gave a false statement before the Probation Officer. This Court is not satisfied with the report of the Probation Officer and this Court reject the recommendation of the Probation Officer.

19. Considering the facts and circumstances of the case, it is a well settled proposition that the scope of revision is very limited and this Court has to see as to whether there is any perversity in re-appreciation of evidence by trial Court or any perversity in the appreciation of evidence by the appellate Court. The revision Court cannot substitute his own view and this Court need not sit in the armchair of the appellate Court and revisit the entire evidence. In this case, both the Courts below rightly appreciated the entire evidence. Hence, there is no perversity in the findings of the Courts below. Further, there is no merit in this revision case. However, considering the facts that A.1 snatched chain from P.W.3 and the recovery is also effected from him and the revision petitioner/A.2 accompanied with A1 and there is no proof available against this petitioner from the report filed by the Probation Officer that he is habitual offender and the submission of the learned



Government Advocate that he is the first offender, considering the age of the petitioner and antecedent, this Court is inclined to modify the sentence that has been imposed against the revision petitioner/A.2 from three years to one year rigorous imprisonment.

20. In the result, this Criminal Revision Case is dismissed as far as the conviction made by the trial Court is concerned and the sentence of imprisonment alone is modified to the extent as stated above.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

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To

1. 1st Additional District Cum Sessions Judge,
I Additional District Cum Session Court,
Coimbatore.
2. The Judicial Magistrate No.II,
Coimbatore.
3. The Chief Judicial Magistrate,
Coimbatore (For Information)
4. The Inspector of Police,
M-3 Kovilpalayam Police Station,
Coimbatore.
5. The Public Prosecutor,
High Court of Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.R.C.No.595 of 2019

KG (CO)
GMY (11/03/2022)