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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2021

PRONOUNCED ON : 07.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NOS.641 AND 581 OF 2021 AND
CRL.M.P.NOS.9636 AND 10536 OF 2021

Prabu @ Moongial Adi Prabu

.. Petitioner/Accused 3
in Crl.RC.No.641 of 2021

1.Manikandan @ Mani
2.Selvam @ Idappadi Selvam

Petitioners/Accused 1 and 2
in Crl.RC.No.581 of 2021

Vs.

State rep by the Inspector of Police
Mallur Police Station
Salem District
(Crime No.524 of 2017)

... Respondent in both
Crl.RCs.

Prayer Crl.RC.No.641 of 2021 :

Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to allow the criminal revision by setting aside the judgment dated 02.02.2021 in Crl.A.No.54/2020 on the file of the Principal Sessions Judge, Salem, confirming the Judgement in C.C.No.45 of 2018 on the file of the Judicial Magistrate Court No.VI, Salem.

Prayer Crl.RC.No.581 of 2021 :

Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to call for records in C.A.No.54 of 2020 dated 02.02.2021 on the file of the Principal Sessions Judge, Salem, confirming the order in C.C.No.45 of 2018 dated 06.08.2020 on the file of the Judicial Magistrate Court No.VI, Salem and set aside the conviction and sentence to secure the ends of justice.



For Petitioner in Crl.RC.No.641 of 2021 : Mr.C.Rajasekaran
For Petitioners in Crl.RC.No.581 of 2021: Mr.R.Sankarasubbu
For Respondent in both Crl.RCs. : Mr.S.Sugendran
Government Advocate
(Crl. Side)

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COMMON ORDER

(The case has been heard through video conference)

The Criminal Revision cases have been filed against the Judgment in C.A.No.54 of 2020 dated 02.02.2021 on the file of the learned Principal Sessions Judge, Salem, confirming the order of conviction and sentence passed in C.C.No.45 of 2018 dated 06.08.2020 on the file of the Judicial Magistrate Court No.VI, Salem.

2. The respondent police registered a case against the petitioners in Crime No.524 of 2017 and after investigation, they laid charge sheet before the learned Judicial Magistrate-VI, Salem, for the offence under Sections 454 and 380 of IPC. The learned Magistrate taken the charge sheet on file and after completing the formalities framed charges against the A1 for the offence under Sections 454 and 380 IPC and against A2 and A3 for the offence under Sections 454 read with 34 IPC and 380 read with 34 IPC.

3. After completion of trial, the learned Magistrate found guilt of A1 for the offence under Sections 454 and 380 IPC and convicted and sentenced him to undergo 3 years simple imprisonment and to pay fine of Rs.1000/- in default to undergo one month simple imprisonment for the offence under Section 454 IPC and also convicted and sentenced him to undergo 3 years simple imprisonment and to pay fine of Rs.1000/- in default to undergo one month simple imprisonment for the offence under Section 380 IPC. The learned Magistrate also found guilt of A2 and A3 for the offence under Sections 454 read with 34 IPC and 380 read with 34 IPC and convicted and sentenced them to undergo 3 years simple imprisonment and to pay fine of Rs.1000/- each in default to undergo one month simple imprisonment for the offence under Section 454 read with 34 IPC and they were also convicted and sentenced to undergo 3 years simple imprisonment and to pay fine of Rs.1000/- each in default to undergo one month simple imprisonment for the offence under Section 380 read with 34 IPC.

4. Challenging the said Judgment of conviction and sentence, the accused persons had filed an appeal before the learned Principal District and Sessions Judge, Salem, in Crl.A.No.54 of



2020 and the learned Principal District and Sessions Judge after hearing the arguments advanced on either side and considering the materials on record, dismissed the appeal and confirmed the conviction and sentence passed against the appellants therein.

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5. Now challenging the said Judgment of dismissal of appeal, A1 and A2 have filed the present revision in Crl.RC.No.581 of 2020 and A3 has filed Crl.RC.No.641 of 2021 before this Court. Since, both the revision cases arising out of same Judgment, both the matters are heard together and disposed of by the common order.

6. Learned Counsel for the petitioners in both the revisions submitted that the prosecution has failed to prove its case beyond all reasonable doubt. The petitioners/accused are strangers to the defacto complainant and identification parade was not conducted in a proper manner. Though, the occurrence is alleged to have taken place during day time, no independent witness was examined. Even the defacto complainant has stated that A1 alone entered into her house and A2 was standing in the street and the other accused/A3 was waiting in a vehicle near the compound wall. Therefore, the offence under Section 454 IPC would not attract as against A2 and A3 and that there is no proper evidence to connect them in this case. The material documents on record show that the police had brought sniffer dog to the house of the victim, which went till the end of the street and did not proceed further, which itself shows that the accused were not identified, whereas, the trial Court failed to appreciate the evidence and wrongly convicted the petitioners.

7. The learned counsel would further submit that the appellate Court as a final Court of fact finding, has to re-appreciate the evidence and to give its findings independently, whereas, the learned Sessions Judge without considering the materials, simply endorsed the views of the Magistrate and dismissed the appeal. Further, photos of the accused have been shown to P.W.1 through CCTV footages at the police station and thereafter only P.W.1 adduced evidence identifying the petitioners as accused and P.W.1 could not have identified the accused without seeing the photos, which is fatal to the case of the prosecution and both the Courts below failed to appreciate the same, which warrants interference. Further, no recovery was effected from A2 and A3. Further, the confession statements recorded by the police parties are not admissible in evidence and it cannot be relied on as evidence against A2 and A3. Therefore, the Judgment of the appellate Court is liable to be set aside and the revision petitions have to be allowed.

8. The learned Government Advocate (Crl. Side) would submit that A1 to A3 went to the house of P.W.1. At that time, no one



was there in the house and the door was locked. Hence, taking advantage of the same, A1 entered into the house, and took the jewels and money from the locker of P.W.1. A2 was standing on the road and observing if anybody was coming and the other accused/A3 was waiting in a two wheeler nearby the compound wall of house of P.W.1 in order to escape soon after the occurrence. Meantime, P.W.1 after dropping her children in the school returned home. At that time, she saw A2 standing on the road by speaking on the cell phone and A3 waiting in a two wheeler nearby the compound wall. Thereafter when she reached her house, she found her house door was opened and when she entered into the house, she saw A1 inside her house and on seeing P.W.1, A1 ran away and climbed on the compound wall and jumped outside from where, A3 who was standing in a two wheeler, picked him up and escaped from the place. Immediately, she informed to her husband and lodged a complaint. P.W.5 who is a neighbour of P.W.1 has clearly stated that she saw A1 and A3 in the occurrence place and subsequently she also identified the accused. Further, the accused have made confession statement before the Village Administrative Officer following which, recovery was also effected and from the recovery mahazar and observation mahazar, the prosecution proved its case beyond all reasonable doubt. The Magistrate as well as the Sessions Judge, rightly appreciated the entire evidence and convicted the accused. Since P.W.1 had clearly seen the accused, in order to confirm, the police had shown the photographs of suspected accused to P.W.1 and after seeing the same, she confirmed identification of the accused and subsequently the accused made confession statements. Therefore, from the evidence of P.W.1 and P.W.5 and through mahazar witnesses, the prosecution proved its case beyond all reasonable doubts and the stolen properties were also recovered from A1. Therefore, there is no merit in the revision cases and the revision cases are liable to be dismissed.

9. Heard Mr.R.Sankarasubbu, learned counsel for the petitioners/A1 & A2 in CrI.R.C.No.581/2021, Mr.G.Rajasekaran, learned counsel for the petitioner/A3 in CrI.R.C.No.641 of 2021 and Mr.S.Sugendran, learned Government Advocate (CrI. Side) appearing for the respondent police and also perused the materials on record.

10. The case of the prosecution is that on 03.11.2017 between 9.00 to 11 a.m., at Nilavarapatty, Muthusamy Nagar, the accused broke open the door of the house of the defacto complainant with iron rod and entered into the house and committed theft of 18 sovereigns of gold jewels and cash of Rs.50,000/- from the bureau.



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11. In order to substantiate the charges, framed against the accused, before the learned Magistrate, on the side of the prosecution, totally 12 witnesses were examined as P.W.1 to P.W.12 and 11 documents were marked as Ex.P1 to Ex.P.11. The stolen jewels were exhibited as M.O.1 to M.O.6 and the cash was exhibited as M.O.7.

12. A reading of the evidence of P.W.1 shows that on 03.11.2017 at about 9 a.m., P.W.1 had gone to drop her daughter in the school and thereafter went to the vegetable market at Salem and returned to home which is situated at Nilavarapatty, Muthusamy Nagar, Salem at about 11 a.m. At that time, near the entrance of her house, two persons were standing, out of which, one person was standing in the middle of the road by talking in cell phone and the other one was waiting in a two wheeler near the compound wall. When she reached her house, she found the door was opened and when she entered into the house, one person was running away from the house. Immediately, she chased him at about 100 meters. However, he ran towards the compound wall and climbed on the wall and escaped. Thereafter, when she entered inside the room, she found her jewels and cash of Rs.50,000/- kept in the bureau were missing. Therefore, she informed to her husband and at about 4 p.m. they lodged the complaint.

13. In the evidence, P.W.5 who is the neighbour of P.W.1 has clearly spoken that her house is just behind the house of P.W.1 and on hearing the noise of P.W.1, she came out. At that time, she saw A1 jumping the compound wall of house of P.W.1 and he got into the two wheeler, which was driven by A2 and they flew away however, she has stated that she had not seen A3. Thereafter, when she enquired P.W.1, she was informed that the jewels and cash were missing.

14. P.W.6 is the Magistrate who conducted the Identification Parade and he has spoken about the proceedings of the Identification Parade and that Identification Parade Report was marked as Ex.P.4. P.W.9 is Village Assistant and P.W.10 is the Village Administrative Officer and they have spoken about the confession statements and recovery. P.W.3 and P.W.4 are the witnesses to the observation mahazar. P.W.2 is the husband of P.W.1.

15. A reading of the evidence of the witnesses P.Ws.1, 2, 5, 6, 9 and 10 show that the prosecution proved its case beyond all reasonable doubt. The counsel for the petitioners contended that P.W.1 herself did not identify the accused and only after seeing the photographs taken from the CCTV footages, shown by the police, she identified the accused before P.W.6/Judicial Magistrate during Identification Parade. But in the evidence, P.W.1 has clearly stated that she saw all the three accused at



the time and place of occurrence.

16. In the cases of this nature, the police would have got some photographs of suspected accused and if they want to confirm, they would show it to the victim and subsequently they would conduct Identification Parade and that may not be a sole ground to disbelieve the evidence of P.W.1, who is the eyewitness and who identified the accused. Further, the evidence of P.W.9 and P.W.10 shows that the recovery was effected from A1.

17. The scope of revision is very limited. This Court cannot conduct re-trial or re-appreciate the entire evidence. The Court has to only see if there is any perversity in appreciation of evidence by the Courts below. It cannot substitute its own view on the finding of facts, unless there is perversity in the appreciation of evidence.

18. On a perusal of records, this Court does not find any perversity in appreciation of evidence and the trial Court has rightly appreciated the evidence and convicted the accused. As a fact finding Court, the appellate Court has also given its independent findings and confirmed the conviction and sentence passed by the learned Magistrate. There is no merit the revision petitions. Accordingly, these Criminal Revision Cases are dismissed. Consequently, connected miscellaneous petitions are closed. The trial Court is directed to secure the custody of the petitioners in both the revisions to serve remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Sessions Judge,
Salem.
2. The Judicial Magistrate Court No.VI,
Salem.



3. The Inspector of Police,
Mallur Police Station, Salem District.

4. The Public Prosecutor,
High Court of Madras.

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Copy To

The Section Officer,
Criminal Section, High Court,
Madras-104.

Criminal Revision Case Nos.641 and 581 of 2021 and
Crl.M.P.Nos.9636 and 10536 of 2021

GPL (CO)
PM/28/01/2022