



Crl.R.C.No.357 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.357 of 2020
and
Crl.M.P.Nos.2657 and 2659 of 2020

1.Arul @ Alex
2.Vimal @ Vimalraj

... Petitioners

Versus

State Rep.by
Sub-Inspector of Police,
T-1, Ambattur,
Tiruvallur District,
Crime No.88 of 2007.

... Respondent

Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code to set aside the judgment passed by the learned Principal Sessions Judge, Tiruvallur in Crl.A.No.47 of 2018 dated 30.09.2019 by confirming the conviction and sentence imposed on the petitioner herein by the learned Judicial Magistrate, Ambattur by his judgment dated 05.03.2018 in C.C.No.71 of 2007.

For Petitioners : No appearance

For Respondent : Mr.R.Murthi
Government Advocate (Crl.Side)



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ORDER

WEB COPY The Criminal Revision Case has been preferred against the judgment dated 30.09.2019 passed in Crl.A.No.47 of 2018 by the learned Principal Sessions Judge, Tiruvallur, confirming the conviction and sentence imposed on the petitioner by the learned Judicial Magistrate, Ambattur by his judgment dated 05.03.2018 in C.C.No.71 of 2007.

2. The case of the prosecution is that the *de-facto* complainant is working as a Tailor in ACL Company and her husband is working in Surana Industries Limited at Madavaram. On the date of occurrence i.e. on 07.02.2007, the *de-facto* complainant and her husband were on the way to invite their relatives to their house-warming ceremony and when they were going to their home via K.K.Road, near Shruti Apartments in the midnight at 12.00 a.m., all of a sudden, three accused persons came to the place of occurrence and out of three persons, one person shut the mouth of the *de-facto* complainant's husband and another person was holding both the hands of the *de-facto* complainant. When the other accused tried to snatch her chain, she was holding the chain tightly and that the other two accused



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persons snatched her ear hangings. However, the ear studs were in-tact with her and she has also not sustained any injuries. Subsequently, they left the place of occurrence and went to the Police Station and lodged a complaint against the accused persons.

3. On the complaint given by the *de-facto* complainant, the respondent/Police registered a case in Crime No.88 of 2007 for the offence under Section 392 r/w 34 IPC against the petitioners herein and yet another. After investigation, the respondent/Police filed a charge sheet before the learned Judicial Magistrate, Ambattur and the same was taken on file in C.C.No.71 of 2007.

4. In order to prove its case before the trial Court, on the side of the prosecution, as many as 5 witnesses were examined as P.W.1 to P.W.5 and 9 documents were marked as Exs.P1 to P9 and one material object was marked as M.O.1. On the side of the defence, no oral evidence was adduced and no document was marked.

5. The trial Court, after hearing the arguments advanced on either side and also considering the materials available on record A1 to A3 were



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convicted for the offence under Section 392 r/w 34 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/-, each, in default, each to undergo simple imprisonment for a period of six months and also ordered that the period of detention already undergone by the accused were directed to be set-off under Section 428 Cr.P.C.

6. Challenging the said conviction and sentences, the petitioners herein/A2 and A3 preferred an appeal in Crl.A.No.47 of 2018 before the learned Principal Sessions Judge, Tiruvallur. The lower Appellate Court, as a final Court of fact finding, re-appreciated the entire materials and dismissed the appeal and confirmed the conviction and sentence passed by the trial Court. Since the first accused had already undergone the entire punishment period, he was set off from the imprisonment.



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7. Challenging the said conviction and sentences, the petitioners/A2 and A3 have filed the present revision before this Court.

8. When the matter was taken up for hearing, there was no representation for the petitioners. Despite sufficient opportunity given to the petitioners to argue the matter, none appeared on behalf of the petitioners. Since the present revision arises out of the concurrent judgments of both the Courts below, this Court is inclined to take up the revision and to dispose of the same on merits, even in the absence of the revision petitioner.

9. Heard the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record.

10. During the trial, in order to substantiate the charges against the accused persons, on the side of the prosecution, the *de-facto* complainant was examined as P.W.1 and her husband was examined as P.W.2. P.W.3 is a Watchman, who was working in the Shruti Apartments, which is located near the scene of occurrence. P.W.4 is mahazar witness. P.W.5 is the Investigating Officer.

11. P.W.1 in her evidence has clearly deposed about the said incident.



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The evidence of P.W.2/husband of the *de-facto* complainant corroborated with the evidence of P.W.1. P.W.3 deposed as ocular witness that he saw the occurrence on hearing the sound, but he has not identified the accused, as they ran away in the dark. However, P.W.1 and P.W.2 identified the accused persons in the identification parade, which was conducted in the Central Prison, Puzhal.

12. In the case on hand, no other independent eye witnesses was examined on the side of the prosecution. Since the occurrence was said to have taken place in the midnight, no one was present at the time of occurrence, however, P.W.1 and P.W.2, who are the eye witnesses, have clearly spoken about the said incident and identified the accused persons, including the petitioners herein. Further, the recovery mahazar has also been proved through the eye-witnesses. Both the Courts below have rightly appreciated the entire evidence and convicted and sentenced the petitioners as stated supra.

13. The scope of revision is very limited. The Trial Court already appreciated the entire evidence and convicted and sentenced the petitioners,



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which was confirmed by the lower Appellate Court and while exercising the revisional jurisdiction, this Court cannot sit in the arm chair of the Appellate Court and re-appreciate the evidence. However, this Court has to see as to whether there is any perversity or infirmity in the judgments of both the Courts below.

14. On a careful reading of the entire materials and the evidence of P.W.1/*de-facto* complainant, P.W.2/husband of the *de-facto* complainant, P.W.3/ocular witness and P.W.4/mahazar witness and Ex.P9/identification report and M.O.1/ear hangings, this Court finds that the prosecution has proved its case beyond reasonable doubt and there is no perversity in the judgments of the Courts below.

15. Hence, this Criminal Revision Case is dismissed and judgments of both the Courts below are confirmed. The trial Court is directed to take steps to secure the custody of A2 and A3 to undergo the remaining period of sentence, if any, and the same shall be set-off under Section 428 Cr.P.C. Consequently, connected miscellaneous petitions are closed.



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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case : Yes/No
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To

1.The Principal Sessions Judge,
Tiruvallur.

2.The Judicial Magistrate,
Ambattur.

3.The Public Prosecutor,
High Court, Madras.

4.The Sub-Inspector of Police,
T-1, Ambattur,
Tiruvallur District.



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P.VELMURUGAN, J.

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