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Crl.R.C.No.140 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.140 of 2020

and

Crl.M.P.No.965 of 2020

Gundubalan @ Balan

... Petitioner

Vs.

State by
The Inspector of Police,
Mettupalayam Police Station,
Mettupalayam,
Coimbatore District.

... Respondent

Prayer:Criminal Revision Petition filed under Section 397 read with 401 of Cr.P.C.,to set aside the order passed in Crl.A.No.152 of 2018 on the file of the I Additional District and Sessions Judge, Coimbatore, dated 19.12.2018 modifying the judgment passed in S.C.No.62 of 2014 on the file of the Assistant Sessions Judge and Chief Judicial Magistrate, Coimbatore dated 14.03.2018.

For Petitioner : Mr.B.Gopala Krishnan

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



Crl.R.C.No.140 of 2020

ORDER

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The respondent police registered a case against the petitioner and two others in Crime No.524 of 2013 for the offence under Section 392 read with 397 read with Section 34 of IPC., After investigation, laid a charge sheet before the learned Judicial Magistrate, Mettupalayam. The learned Magistrate has taken the charge sheet on file in P.R.C.No.37 of 2013. The learned Magistrate after completing the procedural formalities under Section 207 and 209 Cr.P.C., committed the case to the Court of Sessions, since the offences are exclusively triable by the Court of Sessions. Hence, the case was committed to the learned Principal District and Sessions Judge, Coimbatore. The learned Sessions Judge after completing the formalities taken the case on file in S.C.No.62 of 2014 and made over the case to the learned Chief Judicial Magistrate/Assistant Sessions Judge, Coimbatore. The learned Chief Judicial Magistrate after completing the formalities framed the charges against the petitioner/A3 and A1 for the offence under Section 392 read with 397 read with 34 of IPC and against the second accused framed the charge under Section 392 read with Section 397 IPC.



CrI.R.C.No.140 of 2020

2. After completing formalities and during trial, on the side of the prosecution, nine witnesses were examined as P.Ws.1 to 9. Eight documents were marked as Exs.P1 to P8. Besides two material objects were also exhibited as M.O.1 and M.O.2. After trial and hearing the arguments advanced on either side, the petitioner was convicted for the offence under section 392 read with 397 read with 34 of IPC and sentenced to undergo seven years Rigorous Imprisonment and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for the period of one year. Aggrieved over the same, the petitioner has filed an appeal before the First Additional District and Sessions Judge, Coimbatore, for disposal. The learned First Additional District and Sessions Judge has taken the appeal on file and hearing the arguments advanced on both sides, dismissed the appeal with modification that seven years of rigorous imprisonment has been reduced into five years of rigorous imprisonment. Challenging the same, now third accused has filed the present revision before this Court. Revision petitioner is the third accused in the case in S.C.No.62 of 2014 on the file of the Chief Judicial Magistrate, Coimbatore.



Crl.R.C.No.140 of 2020

3. It is the specific case of the prosecution that on 17.08.2013 at about 5.30 pm at Mettupalayam-Ooty road, nearby Thoori bridge, the accused 1 to 3 intercepted the defacto complainant and snatched three sovereigns of gold chain from her. Hence the complaint.

4. Learned counsel for the petitioner would submit that there is no such occurrence said to have taken place as alleged by the prosecution. The respondent police foisted a false case against the petitioner and two others. The alleged occurrence was said to have taken place on 17.08.2013 at about 5.30 pm, whereas the complaint has been given only on the next day. The police station is very near from the place of occurrence. The defacto complainant has to pass through the police station. If at all the occurrence said to have taken place on 17.08.2013 at 5.30 pm, the defacto complainant would have registered the complaint on the same day itself. There is no proper explanation has been offered in this case with regard to delay in registering the complaint. Unfortunately, both the Courts below failed to appreciate the evidence and failed to consider the unexplained delay in registering the complaint, which vitiates the case of the prosecution. In this



Crl.R.C.No.140 of 2020

case, eye witnesses have not identified the present revision petitioner. The trial court failed to appreciate the same and erroneously convicted the petitioner. There is a specific overt act as against this petitioner is that he threatened the defacto complainant. Except that no other allegation levelled against him. Since the occurrence was said to have taken place nearby temple ie., in the public place and in order to prove the case of the prosecution, no independent witness was examined to prove the charge against the petitioner. The prosecution failed to prove its case beyond all reasonable doubt. The trial court also failed to appreciate the evidence and consider the contradictions between the prosecution witnesses, erroneously convicted the petitioner. When the petitioner approached the appellate court, the appellate court as a final court of fact finding failed to reappreciate the evidence, confirmed the conviction and modified the sentence alone, which warrants interference of this Court.

5. Learned Additional Public Prosecutor would submit that three persons were involved in this case. The petitioner has already two previous cases as against him. P.Ws.1 and 2 have clearly identified the revision



Crl.R.C.No.140 of 2020

petitioner during identification parade which was conducted by the Judicial Magistrate. Further, the petitioner has also given confession statement and recovery of material from the accused has also been proved. Therefore, in this case, the prosecution proved its case beyond reasonable doubt. Both the Courts below rightly convicted the petitioner and there is no merit in the Criminal Revision Case and the same is liable to be dismissed.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

7. In order to substantiate the charges, P.Ws.1 and 2 are the eye witnesses have been examined in this case and they have clearly deposed about the incident that the revision petitioner along with two other persons came to the occurrence place and snatched the chain of the defacto complainant. Subsequently, identification parade was conducted and the witnesses have also identified the revision petitioner. Recovery and Mahazar witnesses have also been examined by the prosecution and they



Crl.R.C.No.140 of 2020

have spoken about the recovery of the materials and also the incident.

Though one of the defence taken before the trial court is that the snatched chain was intact. Before the trial court, the defacto complainant has got interim custody of the chain, who is the owner of the chain and she need not keep it as such and certainly if any defect, it could be rectified and she could have worn the chain. The only question is whether M.O.No.1 was snatched by the accused or not. The defacto complainant identified the accused as well as the chain. In this case, arrest of the accused and recovery of the chain were also proved.

8. This Court is a revision court has got limited jurisdiction. This Court cannot sit in the arm chair of the appellate court and revisit the entire evidence and give independent finding on facts as the appellate court. The scope of the revision is very limited and the revisional court while dealing with the revision has to see as to whether there is any perversity in the appreciation of evidence in the judgment of both the Courts below. The Revision Court cannot substitute its own views by re-appreciating the evidence on facts. On perusal of the entire materials and judgment of both



CrI.R.C.No.140 of 2020

the Courts below, this Court does not find any perversity in appreciation of evidence. It is a well settled proposition of law that mere delay in filing the complaint is not the sole ground to disbelieve the case of the prosecution. Further the defect in investigation may not be the sole ground to get the accused acquitted.

9. Considering the fact that the revision petitioner was already involved in two other cases and there is no mitigating circumstances to reduce the sentence of imprisonment, this Court does not find any merit in the Revision Case and the same is liable to be dismissed. Accordingly, Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed. Since the revision petitioner is on bail, the trial court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set off under Section 428 Cr.P.C.,

02.01.2023

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Index:yes/No
Internet:yes/No

8/10



Crl.R.C.No.140 of 2020

To
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1. The I Additional District and Sessions Judge,
I Additional District and Sessions Court,
Coimbatore.
2. The Assistant Sessions Judge and Chief Judicial Magistrate,
Coimbatore.
3. The Inspector of Police,
Mettupalayam Police Station,
Mettupalayam,
Coimbatore District.
4. The Public Prosecutor,
High Court, Chennai.



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Crl.R.C.No.140 of 2020

P.VELMURUGAN, J.

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