



CrI.R.C.(MD).No.813 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	29.09.2023
Pronounced on	:	02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Chinnamani

... Complainant

Vs.

1.State Rep by
The Sub Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.
(Crime No.511 of 2014)

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records connected with the order in C.A.No.98 of 2018 on the file of the learned Additional District and Sessions Judge, Dindigul dated 21.04.2023 in C.C.No.110 of 2016 on the file of the learned Judicial Magistrate No-I, Dindigul dated 03.11.2018 and set aside the same.



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For Petitioner : Mr.R.Alagumani
For respondent : Mr.M.Muthumanikkam
Government Advocate (Crl.Side)

ORDER

The Criminal Revision Case has been filed against the conviction and sentence imposed on the petitioner by the learned Judicial Magistrate No-I, Dindigul in C.C.No.110 of 2016 dated 03.11.2018 and confirmed by the learned Additional District and Sessions Judge, Dindigul District in C.A.No.98 of 2018 dated 21.04.2023.

2. The brief facts of the case:

According to the prosecution, P.W.1 has kept her gold chain in her almirah and on 07.09.2014 at about 10.00 a.m., she left her house to fetch water. When she returned, she found that the petitioner has stolen the said gold chain and therefore, she made a scream. On hearing the voice, P.W.2 , P.W.3 and P.W.4 caught the petitioner with the gold chain and handed over to the respondent police. The respondent police



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registered a case under Section 380 of IPC in Crime No.511 of 2014.

After recovery of the jewel, the investigating officer, enquired the witnesses, collected the materials, arrested the accused and completed the investigation and filed final report before the learned Judicial Magistrate No-I, Dindigul, and the same was also taken on file in C.C.No.110 of 2016.

2.1.The learned trial Judge, upon the appearance of the accused, furnished the copies to him under Section 207 of Cr.P.C., and framed the necessary charges and questioned the accused and as he pleaded not guilty, and he stood for trial.

2.2. In order to prove the charges, the prosecution examined P.W.1 to P.W.7, exhibited Ex.P.1 to Ex.P7 and marked M.O.1.

2.3.The learned trial Judge, after considering the evidence, convicted the accused, namely, the revision petitioner under Section 380 of IPC and imposed a sentence to undergo three years of rigorous imprisonment. Challenging the same, the petitioner had filed the appeal



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before the learned Additional District and Sessions Judge, Dindigul District, in C.A.No.98 of 2018, the same was dismissed, by confirming the conviction and sentence imposed on the petitioner. Aggrieved over the same, the petitioner herein has filed this Criminal Revision Case before this Court.

3. The learned counsel for the petitioner by reiterating the grounds raised in this revision has made the following submissions:

Both the Courts below failed to consider that the accused has not identified by the witnesses properly.

Both the Courts below failed to consider that the prosecution only examined the relatives as witnesses and conducted a biased investigation.

Both the Courts below failed to consider that the recovery has not been proved. Hence, he seeks to allow this case.

4. The learned Government Advocate (Crl.Side) submitted that the occurrence took place in the house of P.W.1 and the petitioner was caught red-handed by the neighbours of P.W.1 and in the said circumstances, only the neighbours are the competent witnesses to speak



about the incident. All the witnesses categorically deposed that when the accused was trying to escape from the scene of occurrence along with the stolen gold chain, namely, M.O.1., they chased and caught the petitioner. Immediately, they produced the petitioner before the respondent police. Occurrence took place on 07.09.2014 at 10.00 a.m., and the FIR was registered before the respondent police on 12.00 noon, and the same reached the trial Court in the evening on the same day. Therefore, there is no doubt over the incident as spoken by the witnesses. In the said circumstances, the trial Court as well as the appellate Court, after considering the evidence, have correctly come to a conclusion that the appellant committed the offence under Section 380 of IPC and the sentence imposed is only 3 years when the petitioner committed the offence of stealing the jewel in the residence. Hence, he prayed for dismissal of this revision case.

5. This Court considered the rival submission made on either side and perused the materials available on records.



6. P.W.1, deposed that on 07.09.2014 at about 10.00 a.m., she kept her gold chain in her almirah and she left her house to fetch water. When she returned, she found that the petitioner has stolen the said said gold chain and tried to ran away from the place. Therefore, she make a scream. On hearing the voice, P.W.2, P.W.3 and P.W.4 caught the petitioner with gold chain and handed over to the respondent police. The said version of P.W.1 is cogent and trustworthy. The evidence of P.W.1 is corroborated with that of the remaining witnesses P.W.3 and P.W.4. Their evidence are trusty worthy and they have no animosity with the accused. The Courts below, have rightly appreciated the above evidence and arrived at the conclusion that the petitioner committed theft of M.O. 1. Therefore, this Court finds no infirmity in the judgment of both the Courts below.

7.The occurrence took place on 07.09.2014 at 10.00 a.m., and the FIR was registered by the respondent police on 12.00 p.m., and they recovered M.O1 and also produced before the learned Judicial Magistrate on the same day. The witnesses clearly identified the recovered items. Hence, recovery of M.O.1 is clearly proved. But the petitioner failed to



explain the possession of the jewels of the defacto complainant. Hence, the presumption under Section 114 of the Indian Evidence Act, comes into play. Section 114 of the Indian Evidence Act, reads as follows:

114.Court may presume existence of certain facts:-

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume:-

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

The Hon'ble Supreme Court, in the case of ***Ayodhya Singh v.***

State of Rajasthan, (1972) 3 SCC 885 held as follows:

10. According to illustration (a) of Section 114 of the Indian Evidence Act, a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his



possession. It would, in our opinion, depend upon the facts and circumstances of each case whether the court should draw the presumption that a person found in possession of stolen goods soon after the theft and who has not been able to account for his possession is the thief or whether he is the receiver of the goods knowing them to be stolen. We may state at this stage that the appellant has not been able to account for his possession of the stolen articles and the explanation furnished by him is not all worthy of credence. Looking to the facts and circumstances of the case, we are of the view that the courts below were justified in drawing the presumption that the appellant was guilty of the offence under Sections 457 and 380, Penal Code, 1860. The fact that the culprits entered the room on the third floor by opening the window and thereafter broke open a large number of boxes and almirahs and removed huge quantity of gold and silverware shows that it was not the work of a single individual. The fact that the appellant was found soon after the theft in possession of a very large number of stolen articles shows that he was himself the thief and not the receiver of stolen goods. The present is not a case



wherein one or two or a very few of the stolen articles were found in the possession of the appellant soon after the theft. On the contrary, the bulk number of stolen articles were recovered from him. The number and the nature of the stolen articles recovered from the appellant soon after the theft coupled with the other circumstances of the case, in our opinion, warrant the presumption that the appellant himself committed the theft after entering the room on the third storey of Kistoor Chand's house through the window.

8. In this case, when the petitioner attempted to escape from the scene of occurrence with M.O.1 from P.W.1's house on 07.09.2014 at 10.00 p.m., on hearing the sound of P.W.1, P.W.2, P.W.3 and P.W.4 chased him and caught him with gold chain M.O.1. It is clear that the petitioner's conduct is relevant under Section 8 of the Indian Evidence Act, to prove his guilt under Section 380 IPC.

9. Therefore, in all aspects, the prosecution has clearly proved the case beyond reasonable doubt. In such circumstances, this Court does not



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find any merit in the contention of the learned counsel for the petitioner and also there is no perversity in the judgment of the Courts below to interfere under the revisionary jurisdiction of this Court.

10. Accordingly, this Criminal Revision Case fails and the same is dismissed.

02.11.2023

NCC :Yes / No
Index :Yes / No
Internet :Yes / No

sbm

To

1. The Judicial Magistrate No-I,
Dindigul.
2. The Additional District and Sessions Judge,
Dindigul.



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K.K.RAMAKRISHNAN, J.

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