



Crl.R.C(MD)Nos.734 and 597 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)Nos.734 and 597 of 2016

1.Gunasekaran	...Petitioner in Crl.R.C(MD)No.734/2016
2.Gopinath	...Petitioner in Crl.R.C(MD)No.597/2016

Vs.

The State represented by
The Inspector of Police,
Velliyanai Police Station,
Karur District.
(Crime No.198 of 2011) ...Respondent in both petitions.

Prayer in Crl.R.C(MD)No.734 of 2016: This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in C.A.No.4 of 2013, dated 18.01.2016, on the file of the Mahila Fast Track Court, Karur, confirmed the conviction and sentence passed by the Assistant Sessions Judge/Chief Judicial Magistrate, Karur in S.C.No.5 of 2013, dated 25.04.2013 and set aside the same.

Prayer in Crl.R.C(MD)No.597 of 2016: This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in C.A.No.7 of 2013, dated 18.01.2016, on the file of



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the Sessions Judge, Mahalir Neethimandram, Karur (Fast Track Mahalir Court), Karur, confirmed the conviction and sentence passed by the Assistant Sessions Judge, Karur in S.C.No.5 of 2013, dated 25.04.2013 and set aside the same.

For Petitioner : Mr.V.Karthikeyan
in Crl.R.C(MD)No.734/2016 for Mr.V.Perumal

For Petitioner
in Crl.R.C(MD)No.597/2016 : Mr.K.Vinayagam

For Respondent
in both petitions : Mr.K.Sanjay Gandhi
Government Advocate (Crl.side)

COMMON ORDER

These Petitions have been filed against C.A.Nos.4 and 7 of 2013, dated 18.01.2016, on the file of the Sessions Judge, Mahalir Neethimandram, Karur (Fast Track Mahalir Court), Karur, confirming the conviction and sentence passed by the Assistant Sessions Judge, Karur in S.C.No.5 of 2013, dated 25.04.2013 and set aside the same.

2.The case of the prosecution is that on 24.08.2011 at about 6.40 p.m. when the victim was proceeding to her house, the accused persons followed her and robbed 5 ½ sovereigns of gold chain by putting towel on her mouth. On the complaint lodged by the victim, the



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respondent police registered the First Information Report in Crime No.198 of 2011 for the offences punishable under Sections 392 r/w 34 of IPC. After completion of investigation, the respondent police filed a final report and the same has been taken cognizance by the trial Court. In order to prove the charge, the prosecution examined PW1 to PW10 and marked Ex.P1 to Ex.P10 and also produced M.O.1 and M.O.2. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidence, the trial Court found that the petitioners/A1 and A2 were guilty for the offences under Section 392 r/w 34 of IPC and sentenced them to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- each, in default, to undergo rigorous imprisonment for the period of six months. Aggrieved by the same, both the accused persons preferred an appeal and the same was also dismissed. Hence, these present revisions.

3.The learned counsel for the petitioner/A2 in Crl.R.C(MD)No.734 of 2016 submitted that there is absolutely no evidence to connect the petitioner/A2 with the first accused. Therefore, Section 34 of IPC would not attract as against the petitioner and he is no way connected with the first accused. In fact, the entire recovery is



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based on the confession statement of the first accused done only by the first accused. No recovery was made from the second accused. He further submitted that the occurrence had taken place on 24.08.2011, whereas the identification parade conducted only on 14.09.2011. There was much delay and as such, the prosecution failed to prove the case beyond reasonable doubt. According to the prosecution, the Investigation Officer produced the red colour towel, which was marked as M.O.2. PW7 failed to follow the procedure for holding test Identification Parade in the prison. Therefore, the petitioner was not at all identified by PW1 in the manner known to law. In fact, PW1 deposed that the petitioner/A2 is known to her and she belongs to nearby village. Therefore, a false case has been foisted against the petitioner/A2 and the petitioner/A2 is no way connected with the offence as alleged by the prosecution. In support of his contention, he also relied by the judgment of the Hon'ble Supreme Court reported in **2007 (15) SCC 372** in the case of **Ravi @ Ravichandran Vs. State represented by Inspector of Police**, which is held as follows:-

"The purported test identification prayed which was held 10 days thereafter, loses all significant in the aforementioned fact situation. Moreover, witnesses were not very sure as to whether they had seen the appellant before – Had



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the accused been known, their identity would have been disclosed in FIR".

4. Therefore, the prosecution failed to prove the case beyond any doubt. He also relied upon another judgment of the ***Hon'ble Court*** reported in ***(2015) 6 SCC 623*** in the case of ***Iqbal and another Vs. State of Uttar Pradesh***, in which it is held as follows:-

"The evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the identity of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime like recovery of articles which are the subject-matter of dacoity and the alleged weapons used in the commission of the offence".

5. He also relied upon the judgment of the ***Hon'ble Supreme Court*** reported in ***AIR 2021 SC 3598*** in the case of ***Rajjan Khan Vs. State of Madhya Pradesh***, which is held as follows:-

"9. However, considering the entirety of the material on record, mere factum of recovery of some money from the house of the appellant by itself, in our view, would not be sufficient to sustain the order of conviction and



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sentence recorded against the appellant. We, therefore, allow this appeal giving benefit of doubt to the appellant and acquit him of all the charges leveled against him".

6. He also relied upon the judgment of the *Hon'ble Supreme Court* reported in *CDJ 2021 SC 540* in the case of *Umesh Chandra & Others Vs. State of Uttarakhand*, which is held as follows:-

"A test identification parade under Section 9 of the Evidence Act is not substantive evidence in a criminal prosecution but is only corroborative evidence. The purpose of holding a test identification parade during the stage of investigation is only to ensure that the investigating agency prima facie was proceeding in the right direction where the accused may be unknown or there was a fleeting glance of the accused. Mere identification in the test identification parade therefore cannot form the substantive basis for conviction unless there are other facts and circumstances corroborating the identification".

7. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent submitted that both the petitioners/A1 & A2 are the habitual offenders similar in nature. In order to prove the charge, the prosecution examined PW1 to PW10 and marked Ex.P1 to Ex.P10. In fact, on the confession of the first accused, recovery was also



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made, which was produced as M.O.1. The material object towel, which was used for the crime produced before the trial Court as M.O.2. The victim was examined as PW1. She categorically identified the accused Nos.1 and 2. They are arrested and M.O.1 and M.O.2 were recovered from the first accused. The petitioners/A1 & A2 were jointly arrested in the same place. Both of their confession are corroborated to each other and it leads to recovery. Therefore, the prosecution categorically proved the case beyond any doubt. That apart, the first accused, so far involved in five previous cases and the second accused involved in six previous cases. Their antecedents are very bad and conviction and sentence imposed by the Courts below do not warrant any interference by this Court.

8. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) appearing for the respondent.

9. It is a case of robbery. There are totally three accused, in which, the petitioners are arrayed as A1 and A2. On perusal of deposition of PW1, it is seen that on 24.08.2011 at 6 .00 p.m., while she proceeded to her house, the accused persons had put a towel on her neck



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and closed her mouth. Thereafter, they snatched her 5 ½ sovereigns of gold chain. She lodged a complaint, which was marked as Ex.P1. On perusal of Ex.P1 revealed that three unknown persons robbed her chain. Further she said that she can very well identify them. Accordingly, on 14.09.2011, they were duly identified by PW1 and the identification parade was also conducted by PW7. PW1 did not identify the third accused and she identified only the petitioners /A1 and A2. On their confession, recovery of M.O.1 and M.O.2 were made. M.O.1 was duly identified by PW1. The arrest, search and mahazar witness were examined as PW6 and categorically deposed and in his presence and arrest and recovery were also made. Therefore, this Identification Parade was conducted in the manner known to law and there is absolutely no flaw done by the prosecution.

10. Therefore, the judgments cited by the learned counsel for the petitioners are not applicable to the case on hand. That apart, both the Courts below categorically held that both are liable to punish for the offences under Sections 392 r/w 34 of IPC. The conviction was not only based on the Identification Parade and also it led to recovery of M.O.1 and M.O.2. M.O.1 was duly identified by PW1. That apart, they had



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very bad antecedent and they also involved in similar type of offence.

Therefore, this Court finds no infirmity or illegality in the conviction imposed on the petitioners. However, the learned counsel for the petitioners would submit that considering their age, the sentence may be reduced. Considering the said request and considering the age of the petitioners, this Court is inclined to reduce the sentence alone. Accordingly, the conviction imposed by the Courts below is hereby confirmed and the sentence for a period of seven years is hereby reduced to three years.

11. Accordingly, these Criminal Revision cases are partly allowed. The respondent is directed to take appropriate steps to secure the petitioners in order to serve their remaining period of sentence.

24.03.2023

NCC : Yes/No
Index : Yes/No
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G.K.ILANTHIRAIYAN, J.

vsd

To

- 1.The Sessions Judge,
Mahalir Neethimandram, Karur (Fast Track Mahalir Court),
Karur.
- 2.The Assistant Sessions Judge,
Karur.
- 3.The Inspector of Police,
Velliyanai Police Station,
Karur District.

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