



Crl.R.C.No.1239 of 2019

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DATED : 15.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1239 of 2019

1. Vinayagam

2. Sridevi @ Kokila

... Petitioners

Vs.

State Represented by,
Inspector of Police,
Nannilam Police Station,
Thiruvarur District
(Crime No.284 of 2016)

...Respondents

Prayer : Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code 1973, to set aside the judgment and orders passed by the District and Sessions Judge, Thiruvarur, in C.A. No.44 of 2018 dated 20.06.2019 confirming the judgment and orders dated 04.08.2018 of the District Munsif cum Judicial Magistrate, Nannilam, Thiruvarur in C.C.No.99/2016

For Petitioners : Mr. B. Ganeshamoorthy
for Mr.K. Karuppaiya Moopanar
For Respondents : Mr.S.Rajakumar
Additional Public Prosecutor.



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ORDER

The present Criminal Revision is filed against the judgment and orders dated 20.06.2019 passed by the learned District and Sessions Judge, Thiruvarur, in C.A No.44 of 2018, confirming the judgment and orders dated 04.08.2018 passed by the learned District Munsif cum Judicial Magistrate, Nannilam, Thiruvarur, in CC No.99 of 2016.

2. The revision petitioners are the accused in C.C. No.99/2016 on the file of the District Munsif cum Judicial Magistrate, Nannilam, Thiruvarur.

3. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

3.1. The Revision petitioners (husband and wife) are tenants of Meena (P.W.1), residing at the rear side portion of P.W.1's house. On 11.10.2016, at about 6 p.m., P.W.1 received a call in her mobile phone



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and the caller identified herself as Suganya, her daughter-in-law. The caller asked P.W.1 to advise her son to mend his ways. It is her deposition that at about 7.30 p.m. both the revision petitioners came down to her house and told her that there are complaints of thefts in and around their area and that they are scared about the same. Thereafter, the 1st revision petitioner (A1) went back to his house and the 2nd revision petitioner(A2) was talking to P.W.1 and during conversation the 2nd revision petitioner snatched P.W.1's phone on the pretext of recharging it. According to P.W.1, the 2nd revision petitioner was trying to delete the call received by P.W.1 at about 6 p.m. At that time, Vinayagam (A1) switched off the main electricity power supply to the house and Sridevi @ Gokila (A2) took chilli powder hidden in her nighty and sprinkled the same on P.W.1's head and mouth. While A2 caught hold of P.W.1's hands, A1 snatched her chain weighing 7 sovereigns of gold (M.O.1).

3.2. P.W.1 informed her son Prasanna (P.W.3) about the incident. P.W.3 was in his shop at the time of occurrence. He reached



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home and saw A2 standing next to his mother. Both P.W.1 and P.W.3 went to Nannilam Police Station at about 11 p.m and lodged a complaint (Ex.P1) with Thiru.V.Ilangovan (P.W.11), the then Special Sub Inspector of Police stating that on 11.10.2016 when she was with her mother-in-law Amsavalli and A2, an unknown person aged around 25 years trespassed into her house switched off the main power supply and sprinkled chilli powder on them and took away 7 sovereigns of gold chain from her neck. About half an hour prior to the incident, she received a call from the mobile phone no.9047055736 and the caller identified herself as Suganya and asked her to advise her son Prasanna (P.W.3) to mend his ways.

3.3. Based on her complaint, P.W.11 registered an F.I.R. in Crime Number 284/16 (Ex.P11) of Nannilam Police Station, for the offences punishable under Sections 457 and 392 IPC against 25 year old unknown person.



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3.4. Thiru.Manimaran (P.W.12), the then Inspector of Police, Nannilam Police Station, took up investigation in Crime Number 284/16, went to the scene of occurrence at about 12 midnight on the same date and prepared an observation mahazar (Ex.P2) in the presence of the witnesses Krishnamoorthy (P.W.10) and Vinoth (P.W.4). He also recovered 25gms of chilli powder (M.O.3) from the place of occurrence under the cover of a mahazar (Ex.P9) in the presence of the same witnesses. Thereafter he examined the witnesses and recorded their statements individually. During the course of investigation he came to know that the offences were committed by the present revision petitioners and consequently arrested the 2nd revision petitioner(A2) on 20.10.2016 at about 4 p.m. near Government Hospital, Nannilam. He recorded her confessional statement (the admissible portion of which was marked as Ex.P13), in the presence of the witnesses Sundar (P.W.5) and Kumar (P.W.7).

3.5. On 21.10.2016, P.W.12 arrested Vinayagam (1st revision petitioner) near Magizhancheri bus stand in the presence of the witnesses



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Pitchai Pathar (P.W.6) and Kaliaperumal (P.W.8) and recorded his confessional statement (the admissible portion of which was marked as Ex.P14). Based on his confessional statement 7 sovereigns of gold chain (M.O.1) and a Nokia Mobile Phone (M.O.2) were seized under the cover of a mahazar (Ex.P15). P.W.12 sent the material objects to the Jurisdictional Magistrate Court under form 91 (Ex.P16).

3.6. Chittirai Selvi (P.W.2), is the neighbour of P.W.1. She had deposed that on 11.10.2016 at about 8 p.m. when she was watching television in her house, she heard a loud noise from the house of P.W.1. When she went there, P.W.1 informed her that someone trespassed into her house, sprinkled chilli powder on her and snatched her gold chain from her neck. According to P.W.2, A2 was also present in the house of P.W.1 and all of them went to the rear portion where A1 and A2 are residing as tenants of P.W.1. Vinayagam (A1) was in his house in the rear portion of P.W.1's house. According to her, all the four of them along with neighbours went in search of the culprit.



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3.7. Prasanna (P.W3) is the son of P.W1. His deposition is that on 11.10.2016, at about 8 p.m. when he was in his shop, he heard that someone had trespassed into the house of his mother (P.W.1) and snatched 7 sovereigns of gold chain from the neck of his mother. He immediately rushed to his mother's house and saw his mother crying. According to him, both A1 and A2 were present in his house.

3.8. Suganya (P.W.9) is the daughter-in-law of P.W.1. Her deposition is that she did not call her mother-in-law on 11.10.2016 at 6.30 p.m. She had also deposed that she came to know that half an hour after the call received by her mother-in-law, someone trespassed into her mother-in-law's house and snatched her gold chain. P.W.4 to P.W8 and P.W.10 corroborated the versions of the prosecution.

3.9. P.W.12, after completing investigation, laid a final report before the District Munsif cum Judicial Magistrate, Nannilam, against the revision petitioners for the offences punishable under Sections 457 and 392 IPC.



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3.10. When the revision petitioners (A1 and A2) were questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing in evidence against them, they denied of having committed any offence. However, they did not examine any witnesses on their side.

3.11. Learned District Munsif cum Judicial Magistrate, Nannilam, after analysing the oral and documentary evidence on record, found both the revision petitioners (A1 and A2) guilty of the offences punishable under Sections 452 and 392 IPC and convicted and sentenced them as under:

<i>Conviction</i>	<i>Sentence</i>
452 IPC	Simple imprisonment for two years and a fine of Rs.500/-.
392 IPC	Simple imprisonment for two years and a fine of Rs.500/-, in default, to undergo simple imprisonment for one month.
The aforesaid sentences were ordered to run concurrently.	

3.12. Aggrieved over the conviction and sentence passed by the



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learned District Munsif cum Judicial Magistrate, Nannilam, the revision petitioners filed an appeal in C.A. No.44 2018 before the District and Sessions Court, Thiruvarur. The District and Sessions Judge, found the judgment of the trial Court in order and dismissed the appeal vide her judgment and orders dated 20.06.2019.

3.13. Aggrieved by the same, the present criminal revision has been preferred.

4. Heard Mr. B. Ganeshamoorthy, learned counsel for the revision petitioners and Mr.S. Raja Kumar, learned Additional Public Prosecutor appearing for the respondent.

5. The entire version of the prosecution appears to have been lifted from a movie. It is alleged that P.W.1, who is the owner of the house, lives in the front portion and A1 and A2, who are husband and wife and the tenants of P.W.1, live in the rear portion of the house of P.W.1. It is alleged that on 11.10.2016 at about 7.30 p.m. switched off



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the electricity power supply and A2 threw chilli powder on the face of the defacto complainant (P.W.1) and also stuffed chilli powder into her mouth. A1 in the meanwhile snatched a gold chain (M.O.1) weighing about 7 sovereigns from the neck of the defacto complaint. According to P.W.1 this incident took place in a flash and in pitch darkness. What is puzzling is that the contents of the complaint (Ex.P1) based on which the FIR (Ex.P11) was registered mentions that the defacto complainant (P.W.1) along with her mother-in-law Amsavalli and Sridevi (A2) were chatting when a person aged about 25 years switched off the main switch and sprayed chilli powder on them while snatching away her 7 sovereigns of gold chain from her neck and made good his escape. In the same complaint, the defacto complainant (P.W.1) had also mentioned that there was a phone call half an hour before the incident from the mobile number 9047055736 in which the caller identified herself as one Suganya (name of her daughter in law) warning her son Prassanna (P.W.3) to behave and conduct himself properly. However, P.W.1 in her deposition contradicted her own version in her complaint (Ex.P1) that both A1 and A2 came to her house and told her that incidents of theft have taken place



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in the neighbourhood and that everyone should be careful. Furthermore, she also deposed that she received a call on her mobile which was not her daughter-in-law. According to her, A2 had snatched her mobile phone under the pretext of recharging her phone. It is also her version that the intention of A2 in snatching her phone was only to delete the call received by her at 6 p.m.. According to her, immediately thereafter A1 switched off the mains when A2 took out the chilli powder hidden in her nighty and sprinkled on her head and her mouth while A1 held P.W.1's neck by both her hands thereby strangulating her. A2 tried to remove the chain with some difficulty and A1 snatched the chain. A1 ran towards his house in the backyard.

5.1. Chithiraiselvi (P.W.2) is the neighbour of P.W.1 and she after hearing commotion in the house of P.W.1, went there and was told by P.W.1 that the incident happened when she was with A2. According to her, A1 was in his house which is behind P.W.1's house and they knocked the door of A1's house who also joined them in search of the culprit who snatched the chain.



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5.2. P.W.3, who is the son of P.W.1 had deposed that when he went to his mother's house after coming to know of the incident found his mother along with A1 and A2 and his mother crying. He had also deposed that he saw chilli powder on her mother's head and eyes. He did not state anything with regard to the presence of P.W.2.

5.3. The lack of clarity in what was deposed by these prosecution witnesses especially P.W.1 is conspicuous. P.W.1 in her complaint (Ex.P1) was clear that a twenty five year old person had sprinkled chilli powder 'on them' which includes A2 and her mother-in-law Amsavalli. Amsavalli was not examined by the prosecution. The complaint is silent on the aspect of whether A2 was present there once the power was restored or she had left the place. However, P.W.2 states that A2 was present in her house. P.W.3 did not speak about the presence of P.W.2 in P.W.1's house.

5.4. The prosecution also has shown that A2 was arrested on



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20.11.2016 at about 4 p.m. and A1 on 21.11.2016 at about 2 p.m from two different locations. It is not the case of the prosecution that A1 and A2 went missing immediately after the occurrence. In fact according to P.W.2, the accused also joined them to find out the culprit. The seizure Mahazar witnesses and the witnesses to the confessional statement expressed their ignorance on the contents of the mahazar and the confessional statements. The police also apparently did not go into the details of the call allegedly received by P.W.1 half-an-hour before the incident of robbery though the mobile number from which the call emanated was mentioned by P.W.1. It is also intriguing to observe that there has been no explanation whatsoever as to whether the mobile phone seized from A1 was the one which was allegedly snatched from P.W.1 by A2 just before the incident on the pretext of recharging as per the version of P.W.1 in her deposition. The complaint (Ex.P1) does not contain any such incident of A2 snatching P.W.1's mobile phone on the pretext of recharging. As already observed, the call details have not been furnished by the police. Incidentally the deposition of P.W.3 son of P.W.1 clarified that his wife was not living with him due to certain difference of opinion.



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The contents of the complaint also mentions that the call received from an unknown number 9047055736 warned her to advise her son to mend his ways.

5.5. Thus there are several questions which remain unanswered and the Investigation Officer has not done a proper investigation so as to unravel the mystery in this incident. P.W.1 who is the victim has contradicted herself and thereby making a mess of the entire theory of prosecution. The Investigation Officer instead of perfecting the inconsistencies has tried to make a complicated version without caring to go into the facts. The entire prosecution case rests on a weak premise and ought to have been binned even at the stage of the trial. Any prudent person would agree that no friendly neighbour would suddenly turn a dangerous enemy to enact such a daring robbery especially when they are fully aware that their identities cannot be masked.

5.6. The theory of the defence that it was a ploy by the victim



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(P.W.1) to evict her tenants in order to accommodate her son and daughter-in-law (who is already estranged) is more convincing. The non examination of Amsavalli, mother-in-law of P.W.1 also defies logic. The script of the prosecution has gone awry and therefore the benefit of doubt goes to the revision petitioners.

6. In the result,

- i. The Criminal Revision Case is allowed.
- ii. the judgment and orders dated 04.08.2018 passed by the learned District Munsif cum Judicial Magistrate, Nannilam, Thiruvarur, in CC.No.99 of 2016 and the judgment and orders dated 20.06.2019 passed by the learned District and Sessions Judge, Thiruvarur, in C.A No.44 of 2018, are set aside.
- iii. The revision petitioners (accused in C.C. No.99/2016) are acquitted



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from all the offences, of which they are charged. Bail bonds, shall stand cancelled. The fine amount, if paid, shall be refunded to the revision petitioners.

15.04.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The District Munsif cum Judicial Magistrate, Nannilam, Thiruvarur.
2. District and Sessions Judge, Thiruvarur.
3. The Inspector of Police,
Nannilam Police Station,
Thiruvarur District
(Crime No.284 of 2016)
4. The Section Officer, Criminal Section, High Court, Madras



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R. HEMALATHA, J.

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