



Crl.R.C.No.1249 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM

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

Crl.R.C.No.1249 of 2019

Chinnathambi @ Udayakumar

... Petitioner

Vs.

State Represented by,
Inspector of Police,
Hasthampatti Police Station
Salem

Crime No.368 of 2016

...Respondent

Prayer : Criminal Revision filed under Section 397 r/w 401 of Criminal Procedure Code 1973, to set aside the judgment and orders passed by the learned III Additional District Judge, Salem, in C.A. No.90 of 2019 dated 19.09.2019 confirming the judgment and orders of the learned Chief Judicial Magistrate, Salem, in S.C. No.103/2017 dated 07.09.2018.

For Petitioner : Mr.R. Sankarasubbu

For Respondents : Ms.A. Shahana Fathima,
Government Advocate (Crl. Side)



Crl.R.C.No.1249 of 2019

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ORDER

The present Criminal Revision is filed against the judgment and orders passed by the learned III Additional District Judge, Salem, in C.A. No.90 of 2019 dated 19.09.2019 confirming the judgment and orders of the learned Chief Judicial Magistrate, Salem, in S.C.No.103/2017 dated 07.09.2018.

2. The revision petitioner is the accused in S.C. No.103/2017 on the file of the Chief Judicial Magistrate, Salem, and he is convicted and sentenced as detailed hereunder.

<i>Conviction</i>	<i>Sentence</i>
Section 392 r/w 397 IPC	Rigorous Imprisonment for 7 years and a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for 3 months
The period of sentence already undergone by the accused was directed to be set off under Section 428 Cr.P.C.	

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



Crl.R.C.No.1249 of 2019

WEB COPY

3.1. On 11.10.2016 at about 7.00 a.m. when the defacto complainant Saraswathi (P.W.1) along with her husband Louis Thomas (P.W.2) went to Uzhavar Santhai located at Hasthampatti, Salem District, the accused Chinnathambi @ Udayakumar snatched her money purse (M.O.1) containing Rs.2,000/- (M.O.2) at knife point (M.O.3) and made good his escape. When the general public tried to apprehend him, he threatened them by brandishing a knife which he possessed. The panic stricken P.W.1, P.W.2 and the public were threatened and helpless.

3.2. P.W.1 having lost her money went to Hastampatti Police Station, Salem, and lodged a complaint (Ex.P1) with Thiru. Vithun Kumar, Sub Inspector of Police (P.W.8). P.W.8 registered an F.I.R. in Crime Number 368/2016 of Hasthampatti Police Station, Salem, under Sections 392 r/w 397 & 506 (ii) IPC.

3.3. Thiru. Kannan (P.W.9), Inspector of Police, Hasthampatti Police Station, Salem, took up investigation in Crime No.368/2016 on the same day at 9.30 a.m. and went to the scene of occurrence, prepared



Crl.R.C.No.1249 of 2019

WEB COPY

an Observation Mahazar (Ex.P3) and a rough sketch (Ex.P7) in the presence of the witnesses, namely, Reni (P.W.5) and Nagaraj (P.W.6). Thereafter, he recorded the statements of witnesses Saraswathi (P.W.1), Louis Thomas (P.W.2), Gandhi (P.W.3), Palanisamy (P.W.4), Sarathi (not examined), Reni (P.W.5) and Nagaraj (P.W.6). Later he arrested the revision petitioner near Johnsonpet Crematorium at 2.30 p.m on the same day. He recorded his confessional statement (the admissible portion of which was marked as Ex.P8) in the presence of the witnesses Arul Rozario (P.W.7) and Niyas (not examined). He also recovered Rs.2,000/- (M.O.2), a knife (M.O.3) and a purse (M.O.1) in the presence of the same witnesses under the cover of a mahazar Ex.P4 and sent the same to the Jurisdictional Magistrate.

3.4. P.W.9, after completing investigation, laid a final report before the Judicial Magistrate No.III, Salem, in P.R.C. No.2/2017 against the accused for the offences punishable under Sections 392 r/w 397 and 506(ii) IPC. The learned Judicial Magistrate, Salem, after furnishing copies of records to the accused under Section 207 CrP.C, committed the



Crl.R.C.No.1249 of 2019

WEB COPY

case to the Court of Principal Sessions Judge, Salem, under Section 209 Cr.P.C. since the offence is exclusively triable by court of sessions. The Principal Sessions Judge, Salem, took the case on file in S.C.No.103/2017 and made over the same to the court of Assistant Sessions cum Chief Judicial Magistrate, Salem.

3.5. The learned Assistant Sessions cum Chief Judicial Magistrate, Salem, framed charges under Sections 392 r/w 397 and 506 (ii) IPC against the accused.

3.6. In order to bring home the guilt of the accused the prosecution examined 9 witnesses and marked Ex.P1 to Ex.P8 and M.O.1 to M.O.3.

3.7. The accused, when questioned under Section 313 Cr.P.C about the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not adduce any oral or documentary evidence.



Crl.R.C.No.1249 of 2019

WEB COPY

3.8. The learned Assistant Sessions Judge cum Chief Judicial Magistrate, Salem, after analysing the oral and documentary evidence, vide his judgment dated 07.09.2018, acquitted the accused for the offence punishable under Section 506(ii) IPC but convicted him under Sections 392 r/w 397 and sentenced him to undergo Rigorous Imprisonment for 7 years and a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for three months.

3.9. Aggrieved over the judgment and orders passed by the trial Court, the accused had preferred an appeal in C.A. No.90 of 2019 before the III Additional District Judge, Salem.

3.10. The learned III Additional District Judge, Salem, after analysing the oral and documentary evidence adduced on both sides, vide his judgment dated 19.09.2019, confirmed the findings recorded by the trial court.



Crl.R.C.No.1249 of 2019

WEB COPY

3.11. Aggrieved over the same, the present Criminal Revision is filed by the revision petitioner.

4. Heard Mr.R. Sankarasubbu, learned counsel for the revision petitioner and Ms.A. Shahana Fathima, learned Government Advocate (Crl. Side) for the respondent.

5. It is a case of alleged robbery at knife point. P.W.1 is the defacto complainant and she was waylaid by the accused on 11.10.2016 at 7 a.m. when she was with her husband (P.W.2) in the uzharav Sandhai, Hasthampatti, Salem. The conviction and sentence have been confirmed by both the lower courts. P.W.1 had lost Rs.2,000/- cash kept in her wallet as it was snatched away at knife point by the accused.

6. Independent witnesses P.W.3, P.W.4 and P.W.5 turned hostile. Reni (P.W.5) is the one which both P.W.1 and P.W.2 relied on as an eye witness. Nagaraj(P.W.6) was only a night watchman as per his own statement. Whether he was present at the time of the incident is a big



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question. Moreover, the Investigation Officer P.W.9 also has deposed that P.W.6 was not present during the incident. So the entire episode boils down to the witnesses P.W.1 and P.W.2. Both are husband and wife. P.W.1 and P.W.2 have slightly different versions which cannot be held as fatal to the case of the prosecution. However, the accused is not a stranger. He has been the neighbour of the couple P.W.1 and P.W.2. That he demanded money from P.W.1 for buying alcohol and that when refused money brandished a knife at P.W.1 and also threatened the larger public who tried to intervene lacks conviction. No independent witness was examined or brought in by the prosecution. The contention of the revision petitioner that there was contradiction between the depositions of P.W.1 and P.W.2 cannot be accorded much importance. There may be minor contradictions, but cannot be said to tilt the case in favour of the revision petitioner. But the non availability of an independent witness matters. P.W.1 in her deposition mentions specially about P.W.5 being present during the incident. But P.W.5 claims ignorance. P.W.6 another witness turns out to be a night watchman. His role play is ruled out by the Investigation Officer himself.



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7. Thus the reliance has to be placed only on P.W.1 and P.W.2.

No doubt they are the victims. But some unanswered questions are there.

Why the accused demanded money only from P.W.1 and not from P.W.2.

While P.W.2 says that he along with his wife P.W.1 went to the police station, P.W.8, the Sub Inspector of Police has deposed that only P.W.1

came to the station to lodge the complaint. Was P.W.2 present in the alleged robbery incident or was it only P.W.1? P.W.1 and P.W.2 have

deposed that they were together when the incident happened. P.W.2 has also deposed that Gandhi (P.W.3) was present in the place of incident.

But P.W.3 turned hostile. The suggestion of the revision petitioner that the accused was a neighbour and had previous enmity with P.W.1 &

P.W.2 and therefore this false case has some relevance. The place of the incident itself has been questioned by the petitioner. It was suggested

during the cross examination of P.W.2 that there was a police van stationed near the place of incident and whether he noticed it. When

such an incident of robbery takes place, the victim may not have the presence of mind to observe the surroundings. But it is intriguing that in

a busy locality like the vegetable market, no individual could narrate the



Crl.R.C.No.1249 of 2019

WEB COPY

incident. With such a room for suspicion the verdicts of the lower court smack of perversity. They have solely relied on the P.W.1 and P.W.2's depositions.

8. The benefit of doubt in this case definitely goes to the accused. The prosecution has not done a complete job. They have failed to prove the guilt of the accused beyond any reasonable doubt. The judgments of the lower courts are perverse.

9. In the result,

- i. The Criminal Revision Case is allowed.
- ii. the judgment and orders passed by the learned III Additional District Judge, Salem, in C.A. No.90 of 2019 dated 19.09.2019 and the judgment and orders of the learned Chief Judicial Magistrate, Salem, in S.C. No.103/2017 dated 07.09.2018, are set aside.



Crl.R.C.No.1249 of 2019

WEB COPY

iii. The revision petitioner (accused in S.C. No.103/2017) is acquitted from all the offences, of which he is charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

17.04.2024

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

To

1. III Additional District Judge, Salem,
2. The Chief Judicial Magistrate, Salem
3. Inspector of Police,
Hasthampatti Police Station
Salem
4. The Section Officer, Criminal Section, High Court, Madras



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Crl.R.C.No.1249 of 2019

R. HEMALATHA, J.

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Crl.R.C.No.1249 of 2019

17.04.2024