

(2015) 06 MAD CK 0448

In the Madras High Court

Case No : Criminal Revision Case No. 1364 of 2008

D. Janardhanan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 394

Citation : (2015) 06 MAD CK 0448

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : T. Arul, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J—On 14.8.2012, when the matter was taken up, there was no representation for the petitioner. Therefore, the matter was listed on 30.8.2012 under the caption "for dismissal". On 30.8.2012, at the request of the petitioner, the matter was adjourned to 20.9.2012. On 20.9.2012 none appears on behalf of the petitioner. Therefore, the matter was directed to be listed on 09.6.2015. Even on 09.6.2015, there was no representation for the petitioner. Therefore, the matter was listed today under the caption ""for dismissal"". Even today, there is no representation for the petitioner. Hence, as per the judgment of the Hon'ble Apex Court reported in K.S. Panduranga Vs. State of Karnataka, (2013) 3 AD 414 : AIR 2013 SC 2164 : (2013) 116 CLT 669 : (2013) CriLJ 1665 : (2013) 3 CTC 631 : (2013) 3 JT 514 : (2013) 2 RCR(Criminal) 219 : (2013) 3 SCALE 152 : (2013) 3 SCC 721 : (2013) 1 SCC(L&S) 791 : (2013) AIRSCW 1382 , if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same. Accordingly, this matter is taken up for disposal on merits.

2. The petitioner herein is the first accused. The defacto complainant has given a

complaint stating that while he was travelling in the bus, his cash bag was cut by a blade by the petitioner herein and when he raised alarm, A2 threatened him by showing a knife. It is also stated in the complaint that a sum of Rs. 49,800/- was stolen by the accused. Based on the said complaint, a case has been registered in Crime No. 692 of 2002 and charge sheet has been filed and the same was taken cognizance in S.C. No. 146 of 206 by the learned Additional Assistant Sessions Judge, Salem. After due trial, the trial Court convicted the petitioner for the offences under Section 394 Cr.PC and sentenced to undergo Rigorous Imprisonment for 4 years and fine of Rs. 2,000/- and in default, to undergo 6 months simple Imprisonment. Aggrieved over the said conviction and sentence, the petitioner has preferred Criminal Appeal No. 84 of 2007 and the learned Additional District Sessions Judge, Fast Track Court II, Salem, dismissed the appeal by confirming the judgment of the trial Court. Against which, the petitioner has preferred this revision.

3. The petitioner, in the memorandum of grounds in this revision, has stated that P.W.3 never gave any satisfactory explanation as to the injury said to have caused by A.2 and while the occurrence took place on 21.8.2003, P.W.8, the Doctor who gave treatment states that P.W.3 came only on 23.8.2002 and there was no injury but only contusion in his hand. Further, it is stated in the memorandum of grounds that P.W.1 himself admitted that cash of Rs. 49,800/- was seized from the petitioner and given to police station. Therefore, even as per the evidence of P.W.1, while going to the police station cash was with him. Therefore, money has not been changed hands. But this fact was not taken note of by the Courts below. Further, in the memorandum of grounds, it is stated that the evidence of P.W.9 would clearly show that the investigation was not thoroughly conducted. P.W.9 stated that he had not recovered the blade. P.W.9 also stated that he had not recovered bus tickets from P.W.1 to P.W.3. P.W.9 also stated that it was not noted whether it is in Government transport bus or private bus and did not recover the trip sheet. Therefore, giving benefit of doubt, the Courts below ought to have acquitted the accused and hence, prayed for allowing the Criminal Revision Case.

4. Mr.T.Arul, learned Government Advocate appearing for the respondent/complainant would contend that mere non- production of the blade as well as trip sheet are not fatal to the prosecution case and it is not a ground for acquittal. In this connection, he relied on the judgment of the Hon"ble Apex Court reported in Kashmiri Lal Vs. State of Haryana, (2013) 6 AD 393 : (2013) CriLJ 3036 : (2013) 3 RCR(Criminal) 259 : (2013) 7 SCALE 411 : (2013) 6 SCC 595 , wherein, in paragraph No. 8.4, it was held that the non-production of the scooter in the Court cannot be ground for setting aside the conviction, since all the witnesses have specifically mentioned about the registration number of the Scooter and there is no justification to discard their testimony.? The learned Government Advocate would also contend that Pws.1 to 10 have given cogent and natural evidence in support of the case of the prosecution. It is submitted by the learned Government Advocate that the Courts below after taking into consideration the

entire evidence, especially, the evidence of P.W.2, P.W.3, injured witness, P.W.4 and P.W.5, have concurrently held that the accused had committed the offence. Therefore, the discrepancy pointed out by the accused will not vitiate the case of the prosecution in any manner.

5. I have perused the materials available on record.

6. On a careful perusal of the judgment of the Courts below, it is very clear that the courts below, after taking into consideration the entire evidence of all the witnesses, especially, the evidence of P.W.2, P.W.3, P.W.5 and P.W.6, have come to the conclusion in convicting the petitioner. In fact, P.W.2, who is a co-passenger in the bus, has categorically stated that he saw the petitioner, who was cutting the bag by a blade and took up the money and when, P.W.1 caught hold of him, the second accused threatened him by showing his knife. At that time, P.W.3, Constable, who was also travelling in the bus caught hold the second accused and thereby sustained injury on his right wrist. Further, P.W.4 Conductor of the bus and P.W.5, driver of the bus have clearly identified that these are the accused persons, who threatened them with knife in the bus. Therefore, the specific ground which has been raised by the petitioner in this revision that no proper explanation has been given by the prosecution is not correct.

7. As far as the alleged discrepancy with regard to cash is concerned, the appellate Court has taken into consideration the alleged discrepancy and stated that it has been proved by the prosecution beyond reasonable doubt. In fact, the appellate Court pointed out that the authorities have seized the cash and thereafter when the complaint was given, it was produced before the Court. The seizure of the cash has been properly explained in Form 95 by P.W.7 and the same has also been clearly spoken to by P.W.1 to P.W.3. Therefore, the discrepancy as pointed out by the petitioner with regard to seizure of cash is not correct.

8. Insofar as non production of the blade and trip sheet are concerned, as rightly pointed out by the learned Government Advocate it may not be a ground for acquittal as per the decision of the Hon'ble Apex Court reported in *Kashmiri Lal Vs. State of Haryana*, (2013) 6 AD 393 : (2013) CriLJ 3036 : (2013) 3 RCR(Criminal) 259 : (2013) 7 SCALE 411 : (2013) 6 SCC 595 . Therefore, the Courts below, after taking into consideration the cumulative effect of all the witnesses, especially, the evidence of P.W.2, P.W.3, P.W.4 and P.W.5, came to the conclusion that the prosecution has proved the guilt against the accused beyond reasonable doubt.

9. In view of the same, I do not find any reason to interfere with the reasoned order passed by the Court below.

10. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.