

(2017) 02 KAR CK 0247
In the Karnataka High Court
Case No : 501 of 2014

Manjunatha alias Yenne Manja Kumara

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Indian Penal Code, 1860, Section 34, Section 392 - Acts done by several persons in furtherance of common intention - Punishment for robbery

Citation : (2017) 02 KAR CK 0247

Hon'ble Judges : Budihal R.B.

Bench : SINGLE BENCH

Advocate : Kumar K.G., K. Nageshwarappa

Judgement

1. Though the matter is listed for admission, with the consent of both sides, it is taken up for final disposal.
2. This petition is preferred by the petitioner/accused No.1 challenging the legality and correctness of the judgment and order of conviction dated 28.07.2011 passed by the IV Addl. CMM, Bengaluru, in C.C. No.17904/2011 and also judgment and order dated 31.01.2013 passed by the Addl. Sessions Judge, FTC-X, Bengaluru, in Cri. A.569/2011.
3. Brief facts of the prosecution case are that the complainant by name Smt. Rasheeda Banu wife of Aslam, residing at Ramanagar, had lodged the complaint on 15.01.2008 stating that, on 15.01.2008 she boarded Mysore Salem Express Train in order to travel to Yeshwanthapura with her two children. The train reached SBC Railway Station at 12.30 p.m. and had stopped there for 45 minutes, most of the passengers had got down and hence, she moved to the compartment, which was nearby to the engine. Along with her, 3-4 lady passengers were also there. The train left SBC Railway Station at 1.20 p.m., but stopped near Malleswaram Railway Station for crossing. After sometime, it started moving slowly, some four persons, who were sitting in the same

compartment, suddenly came and assaulted the complainant and thereafter by showing knife asked her to give all her belongings. The accused persons snatched the vanity bag containing cash of Rs.2,000/- and one mobile phone. Complainant got frightened and no one, who was sitting in the compartment, came to her help. She along with her children jumped from the moving train and sustained injuries. The contract workers, who were working, saw her and helped her in getting admitted to hospital at Rajajinagar. Thereafter, the Police recorded her statement in the hospital and registered the F.I.R.

4. On the basis of the said complaint, Investigating officer conducted the investigation and filed the charge sheet against the petitioner herein and other three accused persons. Thereafter, prosecution, in order to prove its case, in all examined 11 witnesses and got marked the documents Exs.P-1 to P-8 and M.Os.1 and 2. On the side of the defence, neither any witnesses were examined nor any documents were produced.

5. After considering the oral as well as documentary evidence, the trial Court came to the conclusion that the prosecution proved its case beyond all reasonable doubt and convicted the petitioner/accused No.1 for the offence punishable under Section 392 read with Section 34 of IPC. Being aggrieved by the same, the petitioner preferred an appeal before the first appellate Court. The first appellate Court after re-appreciating the materials, ultimately dismissed the appeal confirming the judgment and order of conviction passed by the trial Court, but modified the sentence stating that the accused shall undergo Simple Imprisonment for a period of six months and fine of Rs.1,000/-, in default to pay fine amount, he shall further undergo Simple Imprisonment for one month for the said offence. Hence, petitioner is before this Court in this petition.

6. Heard the arguments of the learned counsel appearing for the revision petitioner-accused No.1, so also, the learned High Court Government Pleader for the respondent-State.

7. Learned counsel for the petitioner submitted that there is no acceptable evidence so far as establishing the identity of the petitioner by P.W.6 during the course of trial proceedings. As per the case of the complainant along with petitioner-accused No.1, three other accused persons have participated in committing the alleged offence. But, no sufficient opportunity was given to the petitioner to cross-examine P.Ws.5 to 11. Without giving such opportunity, the trial Court has accepted the evidence and proceeded to convict the accused. As such, the matter requires reconsideration by the trial Court.

8. Per-contra, learned Government Pleader submitted that all these contentions were canvassed by the petitioner before the trial Court as well as before the first appellate Court and the same were considered and rejected by both the Courts below. He has submitted that complainant and her kids were together when the incident took place and they are the eye-witnesses to the incident, which itself is sufficient to bring home the guilt of the accused. Based on the oral and

documentary evidence the trial Court has come to the right conclusion in convicting the accused person. Even the first appellate Court, though modified the sentence imposed by the trial Court, partly allowed the appeal but confirmed the judgment and order of conviction. There are concurrent findings of the Courts below. Hence, there is no merit in this revision petition and the same is to be dismissed.

9. I have perused the grounds urged in the revision petition, judgment and order passed by the trial Court as well as the first appellate Court.

10. It is the case of the prosecution that the incident in question took place in a moving train wherein P.W.6 was threatened by showing knife to her and her vanity bag was snatched by the accused persons containing cash and mobile phone. It is also further case of the prosecution that since she was frightened, she along with her two kids jumped from the moving train and sustained injuries. Thereafter, she was admitted to the hospital and treated by the Doctor. The prosecution has also produced the wound certificate as per Ex.P6 and the Doctor who issued the wound certificate has been examined as P.W.5. He has issued the certificate stating that he has examined the complainant on 15.1.2008 with history of fall from the moving train and that she has sustained abrasion over the forehead, which is simple in nature. Hence, the contention of the prosecution that complainant jumped from the moving train and sustained injury is supported by the oral evidence of P.W.5-Dr.Kiran and the documentary evidence Ex.P6-wound certificate. The trial Court has also observed in its judgment that the vanity bag containing cash and mobile phone was seized in the presence of panch witnesses. The seizure mahazar was also produced before the Court. Taking into consideration all these materials placed on record, the trial Court ultimately has come to the conclusion that the prosecution has proved its case that accused along with other accused persons committed the offence punishable under Section 392 r/w Section 34 of IPC and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1,000/-. The first appellate Court, after re-appreciating the materials on record has confirmed the order of conviction passed by the trial Court, but modified the sentence by reducing the same to six months instead of one year.

11. Even the first appellate Court has referred to the oral evidence of all the prosecution witnesses chronologically and on appreciating the same and the documents placed on record, has concurred with the findings of the trial Court holding that the judgment of conviction passed by the trial Court does not suffer from any illegality or impropriety.

12. Looking to the judgments and orders of the Courts below it is seen that all the materials were taken into consideration extensively and both the Courts have rightly come to the conclusion that petitioner has committed the offence punishable under Section 392 r/w Section 34 of IPC.

13. I do not find any illegality in the judgments and orders of the Courts below.

No grounds to interfere. Accordingly, the revision petition is hereby dismissed.
Petition dismissed.