(2010) 11 MAD CK 0328

Madras High Court

Case No: Criminal R.C. No. 141 of 2004

Chitti alias Chittibabu	APPELLANT
Vs	
The State	RESPONDENT

Date of Decision: Nov. 25, 2010

Acts Referred:

- Evidence Act, 1872 - Section 114
- Penal Code, 1860 (IPC) - Section 34, 392, 397

Citation: (2011) 2 RCR(Criminal) 361 : (2011) 2 RCR(Criminal) 361

Hon'ble Judges: T. Sudanthiram, J

Bench: Single Bench

Advocate: C.V. Kumar, for the Appellant; A. Saravanan, Government Advocate (Criminal side), for the Respondent

Final Decision: Dismissed

Judgement

T. Sudanthiram, J.

The revision Petitioner herein is the third accused in S.C. No. 12 of 2000, on the file of the Assistant Sessions Judge, Ponneri and he was convicted by the trial Court along with two other accused for the offence u/s 392 r/w 34 IPC and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs. 1000/-in default to undergo six months rigorous imprisonment and also was convicted u/s 397 r/w 34 IPC and sentenced to undergo seven years rigorous imprisonment and the sentence of imprisonment were ordered to run concurrently. The third accused preferred an appeal before the Additional Sessions Judge (FTC-I), Chengalpattu in C.A. No. 84 of 2002. The appellate Court confirmed the conviction on the third accused u/s 392 r/w 34 IPC and confirmed the sentence also, but acquitted the accused u/s 397 r/w 34 IPC. Challenging the said conviction and sentence, the Petitioner/third accused had preferred this criminal revision petition before this Court.

2. The case of the prosecution, in brief, is that on 31.05.1999, P.W.1 who was working as a Physical Director in a school went to Chennai along with his father, mother and sister to purchase certain articles for his marriage and they were all returning in the train from Chennai Central Station at about 10.40p.m. In the night at about 12.00, while the train was crossing between Ponnery and Kaverapet, the accused 1 to 3 who were in the coach showed their knives and threatened them. They also snatched the gold chain, gold ring, watches from P.W.1 and a gold ring and also a cash of Rs. 2500/-from P.W.2 - father of P.W.1 and they also snatched one gold ring from P.W.3 - Sister of P.W.1. They also snatched two watches from two other persons. While the train reached near Kaverapet railway station, all the three accused escaped. P.W.1 gave complaint Ex.P.1 to P.W.8 -Sub Inspector of Police, Gummidipoondi Police Station. P.W.8 - Sub Inspector of Police on receiving the complaint registered a case in Crime No. 194 of 1999 u/s 397 IPC and prepared Ex.P.8 First Information Report. P.W.7, Inspector of Police took up the investigation. He arrested the accused at 02.30 hours and he recorded the confession statements from the accused and recovered one Classic gold chain watch and 5 grams of gold ring and 11/2 sovereign gold chain and a knife from the first accused. He recovered a gold ring with green colour stone and a cash amount of Rs. 2500/-and a knife from the second accused. He also recovered 3 grams of gold ring with red colour stone, one Timex Watch and a Samsung Watch from the third accused. He recorded the statement of witnesses and the accused was sent for remand.
3. P.W.10 - Judicial Magistrate, Ponnery, conducted a Test Identification Parade on 03.08.1999 and in the Test Identification Parade, P.W.1 identified all the three accused, P.W.2 identified the first and the second accused. P.W.7 after completing the investigation, laid the final report against all the accused.

4. In order to establish the case, the prosecution examined P. Ws.1 to 10, marked Ex.P.1 to P.12 and produced material objects M. Os.1 to 10. When the accused were questioned u/s 313 Cr.P.C, they denied their complicity. On the side of the defence, neither any witness nor any document was marked. The trial Court and the appellate Court after analysing the evidence found the accused guilty.

5. Mr. C.V. Kumar, learned Counsel appearing for the Petitioner submitted that though among P. Ws.1 to 3, it was only P.W.1 who had identified the third accused in the Test Identification Parade and even P. Ws.1 to 3 had admitted in the cross examination that he had seen the third accused in the police station on the next day morning and as such the Test Identification Parade losses its value.

6. Per contra, learned Government Advocate (Criminal side) submitted that even though P. Ws.2 and 3 have not identified the third accused in the Test Identification Parade, P.W.1 had identified the third accused and P. Ws.1 to 3 have identified the third accused in the court which is a substantive piece of evidence. The learned Government Advocate (Criminal side) further submitted that immediately after the occurrence within a few hours, all the three accused have been arrested by the

police and all the properties were also recovered which is a strong piece of evidence against the accused to prove that the accused have committed the robbery.

7. This Court considered the submissions and perused the records. It is the evidence of P. Ws.1 to 3, while they were travelling in the night hours in the train, all the three accused snatched the jewels, wrist watches and cash from them by threatening with knives. According to their evidence in the cross examination, accused 2 and 3 were holding knives in their hands. From the evidence of P. Ws.1 to 3, all the three accused have committed robbery by showing knives is established. The question now arises for consideration is whether the revision Petitioner is one among three culprits. Though in the test identification parade, it was only P.W.1 who had identified the Petitioner/third accused, as it was admitted by P. Ws.1 to 3 that they had seen the accused in the early morning in the police station, to some extent, it is to be accepted that test identification parade losses its value. But at the same time, it does not exclude the involvement of the accused in the occurrence. The occurrence took place in the mid night and all the three accused have been arrested by the police at 2.30a.m., and the properties have been recovered. From the third accused, M. Os.7 to 10 have been recovered and other properties were recovered from the other accused 1 and 2. As the robbed properties have been recovered from the accused within a few hours from the time of occurrence, it is very clinching material to draw the presumption u/s 114 of the Indian Evidence Act and to conclude that the accused have committed the offence of robbery, especially in the absence of any explanation from the accused for the possession of the robbed properties. Hence the conviction on the Petitioner u/s 392 r/w 34 IPC is confirmed.

8. At this juncture, the learned Counsel for the Petitioner prayed for reduction of sentence of imprisonment imposed on the Petitioner. Though originally the trial Court convicted the Petitioner for the offence u/s 397 r/w 34 IPC and sentenced to undergo 7 years rigorous imprisonment along with conviction u/s 392 r/w 34 IPC for which he was sentenced to undergo five years rigorous imprisonment, the appellate Court had acquitted the Petitioner from the offence u/s 397 r/w 34 IPC observing that no separate conviction could be made u/s 397 r/w 34 IPC, and no separate charge ought to have been framed u/s 397 IPC.

9. This Court feels that the trial Court has not understood the concept of Section 397 IPC while framing charges against the accused. The trial Court framed two charges against the accused 1 to 3, one charge for Section 392 r/w 34 IPC and another charge for Section 397 r/w 34 IPC.

10. Section 392 IPC is as follows:

392. Punishment for robbery Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Section 397 IPC is as follows:

397. Robbery, or dacoity, with attempt to cause death or grievous hurt If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

11. Section 397 IPC is only a rider to Sections 392 IPC and 395 IPC -''Punishment for robbery'' and ''punishment for dacoity'' respectively. No substantive charge can be framed u/s 397 IPC. The substantive charges can be only u/s 392 IPC or 395 IPC and in cases where the deadly weapon is used by the offender either at the time of robbery or dacoity or caused grievous hurt to any person, it prescribes only the minimum sentence of seven years. Therefore, the object to Section 397 IPC is that while punishing the offender u/s 392 or 395 IPC, the sentence should not be less than seven years. Therefore, while framing charges either u/s 392 IPC or 395 IPC, if the additional ingredients of Section 397 IPC are attracted, then the charges should be framed as Section 392 r/w 397 IPC or 395 r/w 397 IPC.

12. Though the Petitioner ought to have been sentenced not less than seven years, as he had used knife while committing robbery, the appellate Court having set aside the sentence of seven years, this Court does not want to further reduce the sentence of imprisonment imposed on the Petitioner.

13. For the above said reasons, the criminal revision petition is dismissed. The learned Assistant Sessions Judge, Ponneri, is directed to issue warrant and take steps to secure the third accused in order to undergo the remaining period of sentence.