



R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 826 OF 2022

BETWEEN:

1. SRI TABREZ PASHA
S/O MUSTHAQ AHMED
AGED ABOUT 28 YEARS,
R/AT 1ST CROSS, K G MOHALLA
KOLAR TOWN
PIN-563102

...PETITIONER

(BY SRI. VENKATESHAMOUNI K.M., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP BY KOLAR RURAL POLICE STATION
KOLAR

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONBLE COURT MAY BE PLEASED TO 1.SET ASIDE THE JUDGMENT DATED 20.11.2021 IN CRL.A.NO.9/2020 PASSED BY THE PRL.DISTRICT AND SESSIONS JUDGE AT KOLAR AND APPRECIATE THE JUDGMENT OF THE TRIAL COURT IN C.C.NO.628/2015 DATED 16.08.2019 PASSED BY THE 1ST ADDITIONAL SENIOR CIVIL JUDGE AND C.J.M KOLAR AND DIRECT THE ACQUITTAL OF THE PETITION/ACCUSED FOR THE OFFENCE P/U/S 394 OF IPC.





THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

1. Heard Sri. Venkatesha Mouni, learned counsel for the revision petitioner and Sri. K. Nageshwarappa, learned High Court Government Pleader.
2. Accused who has been acquitted in CC No.628/2015 for the offence punishable under Section which was challenged by the State in Criminal Appeal No.9/2020 wherein he has been convicted for the offence punishable under Section 394 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.30,000/- with default sentence of six months is the revision petitioner.
3. At the outset, revision petition itself is not maintainable against an order of conviction by the First Appellate Court by reversing order of acquittal passed by Trial Magistrate and accused ought to have filed an appeal.



However, the revision petition is pending since 2022 and at this distance of time, if the revision petitioner is directed to file a separate appeal and the same needs to be adjudicated on merits, it would result in further delay and also miscarriage of justice and therefore by consent of the parties, though the accused has filed the revision petition, same is taken for consideration as an appeal by consent of the parties.

4. Facts in the nutshell for disposal of the present petition are as under :

4.1 A complaint came to be lodged by Sri. Narayana Swamy, who is the husband of PW2, Smt. Susheelamma, contending that on 30.11.2014 at about 07.15 p.m. when said Smt. Susheelamma was traveling in an autorikshaw bearing number KA-08-5257 in order to go to Kendatti, when autorikshaw reached Kendatti gate, accused failed to stop the said autorikshaw there and further moved the autorikshaw with high speed to Gudnapura Cross on Kolar-



Bangalore National Highway-75 and there he committed the robbery of the gold chain with black beads (karimani) and when resisted, he also assaulted the Smt. Susheelamma on the lips, forehead and face and caused fist injury and thereby committed an offence under Sections 392 and 394 of the Indian Penal Code.

4.2 Police after thorough investigation, filed charge sheet against the accused after recovering the said gold black bead chain from the custody of the accused.

4.3 Learned Trial Magistrate after receipt of charge sheet took cognizance of the aforesaid offences and summoned the accused and however and secured the presence of the accused.

4.4 Charges were framed. The accused pleaded not guilty. Therefore, trial was held.

4.5 In order to bring home the guilt of the accused, twelve witnesses were examined as PWs.1 to 12 and thirteen documentary evidence were placed on record



which were exhibited and marked as Exhibit P1 to Exhibit P13 comprising of complaint, Seizure Mahazar, spot Mahazar, photographs, wound certificate and FIR. Portion of the contradictory statement of one of the prosecution witnesses namely Nagesh (PW4 was marked as Exhibit D1) during the course of cross-examination of PW1. The seized gold black beads chain was marked as MO1 before the Trial Magistrate.

4.6 After conclusion of recording of evidence, learned Trial Magistrate recorded the statement of the accused statement as is contemplated under Section 313 of the Code of Criminal Procedure and heard the arguments of the parties and noted that there is a contradictory statement in the prosecution witnesses and there is a serious *lacuna* in the investigation and thus recorded in order of acquittal.

4.7 State filed an appeal before the District Court in Criminal Appeal No.9/2020. Learned Judge in the First



Appellate Court, after securing the records from the Trial Magistrate, heard the arguments of the parties and re-appreciated the material evidence on record, allowed the appeal of the State and convicted the accused for the offence under Section 394 of the Indian Penal Code and sentenced the accused to undergo rigorous imprisonment for a period of five years and to pay Rs.30,000/- with default sentence of six months. Said order is called in question in this revision petition.

5. As already pointed out, accused must have filed an appeal instead of filing a revision petition. Nevertheless, having obtained consent by both the parties, this Court heard the arguments of counsel for revision petitioner and treating the present revision petition as appeal with a wider scope.

6. Sri. Venkatesha Mouni, learned counsel for the petitioner would contend that once there is an order of acquittal recorded by the Trial Magistrate, wherein serious



contradictions are found from the material evidence placed on record by the prosecution and there is a *lacuna* in the investigation, First Appellate Court ought to have confirmed the order of acquittal as an order of acquittal would result in reinforcing the innocence of the accused.

7. He would further emphasize that prosecution is required to establish the case beyond all reasonable doubt and mere suspicious at any stretch of imagination would not take the seat of proof and therefore while re-appreciating the material evidence on record, First Appellate Court ought not to have ignored the contradictions elicited in the cross-examination of prosecution witnesses.

8. He would also contend that on the same set of material evidence placed on record if two views are permissible, a view which favours the accused must be preferred. Therefore, approach of the First Appellate Court in totally reversing the findings recorded by the Trial



Magistrate is bad in law and thus sought for allowing the revision petition and acquit the accused.

9. Per contra, Sri. K. Nageswarappa, learned High Court Government Pleader, would support the impugned Order passed by the First Appellate Court reversing the Order of the Magistrate and convicting the accused for the offence under Section 394 of the Indian Penal Code is just and proper.

10. He would further point out that recovery of MO1 under seizure marked at Exhibit P2 is sufficient enough to establish the nexus between the incident and the revision petitioner which has been rightly appreciated by the learned Judge in the First Appellate Court and which needs no interference by this Court.

11. He also emphasizes that there is no explanation whatsoever forthcoming as to the possession of MO1 by the accused and in the absence of any previous enmity or animosity as against the petitioner, why would PW2 would



falsely implicate him in the case is a question that remains unanswered on behalf of the petitioner and thus sought for dismissing the petition.

12. Having heard the arguments of both sides, this Court perused the material on record meticulously.

13. On such perusal of the material on record, following points would arise for consideration:

(i) Whether the material evidence placed on record would be sufficient enough to sustain the order of conviction passed by the learned Judge in the First Appellate Court for the offence punishable under Section 394 of the Indian Penal Code?

(ii) Whether the impugned judgment of the First Appellate Court suffers from legal infirmity and conformity and thus calls for interference?

(iii) Whether the sentence ordered by the learned Judge in the First Appellate Court convicting the appellant before the Appellate Court is on the higher side?

(iv) What order?



Regarding point Nos.1 and 2:

14. No doubt, an Order of acquittal recorded by a Trial Magistrate would act as a reinforcement to the innocence of the accused inasmuch as every accused must be presumed to be innocent. However, powers of the Appellate Court in a given case, is not limited in re-appreciating the material evidence on record.

15. In the case of ***Chandrappa and others vs. State of Karnataka*** reported in ***(2007) 4 SCC 415***, Hon'ble Apex Court in paragraph No.42, has held as under;

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it



may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.



16. Again in the case of ***Babu versus State of Kerala*** reported in **(2010) 9 SCC 189**;; the Hon'ble Apex Court in paragraph Nos.12 and 19 has held as under ;

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P., Shambhoo Missir v. State of Bihar, Shailendra Pratap v. State of U.P.3, Narendra Singh v. State of M.P., Budh Singh v. State of U.P.5, State of U.P. v. Ram Veer Singh, S. f Rama Krishna v. S. Rami Reddy, Arulvelu v. States, Perla Somasekhara Reddy v. State of A.P.9 and Ram Singh v. State of H.P.10)



HC-KAR

19. Thus, the law on the issue can be summarised to the effect that in 9 exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

17. Keeping in view the principles enunciated in the aforesaid decisions, an Appellate Court does have the power to re-appreciate the material evidence despite an order of acquittal being recorded by the Trial Magistrate and convict the accused if there are material evidence which would attract the ingredients of a particular offence.

18. In the case on hand, in the background of the aforesaid legal principles, The First Appellate Court re-appreciated the material evidence, namely the testimony of PW2, who is the victim in the incident.



19. It is the specific case of the prosecution that she boarded the autorikshaw bearing No.KA-08-5257 driven by the accused herein for visiting the Kendatti on 30.11.2014 at about 07.15 p.m. It is the specific case of PW2 that even after reaching the Kendatti gate, the autorikshaw was not stopped and it moved further in a speedy manner and went to the place called Gudnapura cross on the Kolar-Bangalore National Highway No.75, wherein at an unknown place, autorikshaw was stopped and overpowering the resistance offered by PW2, accused was successful in robbing the gold chain with black beads from the neck of PW2.

20. In the incident, in order to overpower the resistance offered by PW2, accused caused fist injury on the face resulting in bleeding injury on the lips. Somehow PW2 was able to reach home and intimated the incident to her husband who is examined as PW1, who in turn lodged the complaint about the incident with Kolar Rural Police, Kolar.



21. The police after registering the case vide Exhibit P13, thoroughly investigated the matter and filed the charge sheet *inter-alia* apprehended the accused person and recovered the MO1 from the custody of the accused under Exhibit P2 - Mahazar.

22. In a matter of this nature, identity of the accused and seizure of robbed article assumes a greater significance in establishing the offence.

23. To establish an offence under Section 394 of the Indian Penal Code, prosecution is required to establish following ingredients:

(a) Essential Ingredients - An offence under Section 394 has following essential ingredients:

- (i) That the accused was one amongst others in committing or attempting to commit robbery;
- (ii) That the accused caused hurt to any other person while doing so;
- (iii) That he did so (caused hurt) voluntarily.

24. In the case on hand, admittedly accused is a stranger to PW2. In the usual course, she boarded the



autorickshaw bearing No.KA-08-5257 driven by the accused to reach Kendathi. Pertinently at about 07.15 p.m. on 30.11.2014, when the autorikshaw reached Kendathi gate, taking advantage of a lonely lady being the passenger of the autorikshaw, accused drove the autorikshaw beyond the Kendatt gate and near Gudnapura cross, on Kolar-Bangalore National Highway No.75 road, stopped the autorikshaw in a lonely place and tried to rob the gold chain from the neck of PW2. PW2 has resisted the same and accused was able to overpower PW2 by causing fist injury as could be seen from the wound certificate marked at Exhibit P.12, was successful in robbing the MO1 from the neck of PW2.

25. Handing over of the seized gold chain to the hands of PW1 is depicted in Exhibit P9-photograph.

26. Autorikshaw which was seized under Exhibit P3-Mahazar is found in Exhibit P7 and Exhibit P8-



photographs. Accused is seen along with the autorikshaw in Exhibit P5-photographs.

27. When these incriminatory materials were put to the accused, under Section 313 of the Code of Criminal Procedure, accused failed to offer any explanation to those incriminatory materials, but denied all the incriminatory materials.

28. Admittedly, there is no previous enmity or animosity that existed between complainant, his wife PW2 or the investigation agency as against the accused so as to falsely implicate him in the incident.

29. Further, to a specific question with regard to seizure Mahazar wherein MO1 is seized vide Exhibit P2 and autorikshaw is seized vide Exhibit P3, accused has not offered any explanation whatsoever.

30. Why would investigating agency implant MO1 which is a valuable gold ornament only with an intention to obtain an order of conviction against the accused is a



question that remains unanswered especially in the absence of any previous enmity or animosity.

31. Thus, material evidence on record in the considered opinion of this Court has been rightly reappreciated by the learned Judge in the First Appellate Court, judgment of acquittal passed by the learned trial Magistrate.

32. Thus, this Court does not find any legal infirmity or perversity in the finding of guilt recorded by the First Appellate Court while convicting the accused for the offence under Section 394 of the Indian Penal Code.

33. In the foregoing discussion, point Nos.1 and 2 are answered 'in affirmative' and 'negative' respectively.

Regarding Point No.3:

34. Learned counsel for the revision petitioner made an alternate submission that in the event, this Court, while upholding the order of conviction recorded by the First Appellate Court, custody period of 15 months may be



treated as period of imprisonment by enhancing the fine amount reasonably as the revision petitioner is a first time offender.

35. Learned High Court Government Pleader for the respondent/State however would oppose the said submission made on behalf of the revision petitioner by contending that accused being the driver of the auto rickshaw, took advantage of a lonely lady being the passenger in a auto rickshaw, drove the auto rickshaw to a unknown place near Gudnapura cross and robbed the chain besides causing fist injury to P.W.1 as could be seen from the wound certificate marked at Ex.P.12 and thus, sought for dismissal of the revision petitioner in *toto*.

36. He would further contend that if any lenience is shown to the revision petitioner, similarly placed perpetrators of the crime would get encouraged and same may result in sending a wrong message to the society at



large and thus, sought for dismissal of the revision petition.

37. This Court has given anxious consideration to the rival contentions with regard to the appropriate sentence to be passed in the case on hand.

38. Admittedly, accused is a first time offender. It is an isolated incident that has occurred in the year 2014. Accused is now married and is having two children and a wife to be maintained. He continuous to earn his livelihood by running an auto rickshaw.

39. It is to be borne in mind that the role of Court while passing the order of conviction is altogether different while passing an order of sentence in a given case.

40. Learned Judge in the First Appellate Court did consider the contentions urged on behalf of the parties including the grant of benefit of Probation of Offenders Act.



41. However, Court also noted that accused has the responsibility of taking care of his wife and children and despite the same, benefit of Probation of Offenders Act is not granted especially in the absence of any criminal antecedents.

42. This Court cannot lose sight of the fact that every sinner has a future and there is a scope of reformation in everybody's life. Court is also expected to keep in mind the celebrated principles in the criminal jurisprudence that the Courts are required to hate the crime and not the criminal.

43. Taking note of these aspects of the matter, this Court is of the considered opinion that if the sentence of imprisonment is modified by directing the custody period already undergone by the accused as period of sentence by enhancing the fine amount in a sum of Rs.4,00,000/- which can be paid as compensation in addition to the compensation awarded by the learned Judge in the First



Appellate Court ends of justice would be met. Accordingly, point No.3 is answered ***partly in the affirmative.***

44. **REG. POINT No.4:**

In view of the findings of this Court on point Nos.1 to 3 as above, following:

ORDER

- i. Revision petition is ***allowed in part.***
- ii. While maintaining the conviction of the revision petitioner for the offence punishable under Section 394 of IPC, custody period already undergone by the accused to the extent of 15 months is treated as period of imprisonment for the proved offence under Section 394 of IPC and to pay enhanced fine amount of Rs.4,00,000/- in two installments i.e., one installment in a sum of Rs.2,00,000/- on or before **30.04.2026** and another



installment in a sum of Rs.2,00,000/- on or before **31.05.2026** before the learned Trial Magistrate.

- iii. After receipt of enhanced fine amount of Rs.4,00,000/-, same shall be paid as compensation to P.W.2 under due identification.
- iv. Failure to pay the enhanced fine amount by the revision petitioner as aforesaid would result in automatic restoration of the order of imprisonment passed by the learned Judge in the First Appellate Court.

Office is directed to return the Trial Court Records with copy of this order forthwith for issue of modified conviction warrant.

Sd/-
(V SRISHANANDA)
JUDGE

SNC from paragraph Nos.1 to 31,
KAV from paragraph Nos.32 to end.
List No.: 1 Sl No.: 21