

**Kala @ Kavitha Vs. State Rep. By**

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**SooperKanoon Citation :** [sooperkanoon.com/64150](http://sooperkanoon.com/64150)

**Court :** Chennai

**Decided On :** Aug-18-2015

**Judge :** The Hon'ble Mrs.Justice S.Vimala

**Appellant :** Kala @ Kavitha

**Respondent :** State Rep. By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

18. 08.2015 CORAM THE HON'BLE MRS.JUSTICE S.VIMALA CrI.R.C.(MD) No.612 of 2007 Kala @ Kavitha ... Petitioner -vs- State Rep. by The Inspector of Police, Ponmalai Police Station, Trichy District. Crime No.331 of 2004 ... Respondent Prayer Criminal Revision Petition has been filed under Sections 397 and 401 of Cr.P.C., challenging the order passed by the I Additional District Judge, Trichy in C.A.No.84 of 2007 dated 21.07.2007, confirming the judgment passed by the learned Judicial Magistrate No.V, Trichy in C.C.No.264 of 2006 dated 15.02.2007. !For Petitioner : Mr.J.Lawrance ^For Respondent : Mr.P.Kandasamy Govt. Advocate (Crl.Side) :

**ORDER**

This Criminal Revision Petition has been filed to set aside the order passed in C.A.No.84 of 2007 dated 21.07.2007 by the I Additional District Judge, Trichy, confirming the judgment passed by the learned Judicial Magistrate No.V, Trichy in

C.C.No.264 of 2006 dated 15.02.2007.

2. Learned Judicial Magistrate No.V, Trichy had found the accused by name Kala @ Kavitha guilty under Sections 462 and 381 IPC and imposed a sentence of two years rigorous imprisonment in respect of each of the offence. This judgment has been confirmed by the appellate authority, namely, I Additional District Judge, Trichy in C.A.No.84 of 2007. Challenging the concurrent judgments of conviction, the present revision petition has been filed by the accused.

3. In order to appreciate the grounds of revision, it is necessary to go into the basic facts of this case. Brief Facts:- 3-i) The accused was working as a housemaid in the house of P.W.1 / Kumar. P.W.2 is the wife of P.W.1. On 25.09.2004 at about 2:00 p.m., when P.W.2 / Santhi was at home, the accused gave juice of bitter guard to her, advising that the bitter guard juice is good for health. After consumption of the juice, P.W.2 went out to pick her son and there she fell down unconscious. When she was taken back home, she found that 48 + sovereigns of jewels were missing. 3-ii) The prosecution case is that it is the accused, who had stolen away the jewels. 3-iii) On these allegations, a case has been registered under Sections 462 and 381 IPC. The Inspector of Police, Ponmalai Police Station, after investigation, had laid a final report against the accused person. The prosecution, in order to substantiate the charge against the accused, examined three witnesses and marked eight documents. 3-iv) The Trial Court, on consideration of the materials placed before it, found the accused guilty. The main evidence relied upon by the prosecution is the recovery of jewels based upon the confession statement given by the accused.

4. It is necessary to extract the provisions relating to Sections 462 and 381 IPC in order to appreciate the grounds of revision. ?462. Punishment for same offence when committed by person entrusted with custody Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

381. Theft by clerk or servant of property in possession of master Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

5. The Trial Court has also relied upon the statement given by the accused during questioning under Section 313 Cr.P.C. Apart from that, the Trial Court has relied upon the recovery of jewels from the accused based upon the confession.

6. The main contention of the learned counsel for the revision petitioner is that the admission or statement given by the accused during 313 questioning cannot be the basis for conviction and therefore, the conviction is liable to be set aside.

7. Whether this contention of the learned counsel for the revision petitioner / accused merits acceptance is the main issue to be decided in this case.

8. Under Section 27 of the Indian Evidence Act, the fact discovered in consequence of the information received from a person accused of any offence is admissible and it becomes acceptable, as the fact discovered lends assurance to the confession made. So far as this case is concerned, the confession given by the accused has led to the recovery of jewels made from him.

9. Apart from the recovery made, the other evidence available in this case lends corroboration to the recovery made. It is relevant to point out that the accused has made the admission of the prosecution case during the inception as well as during questioning under Section 313 Cr.P.C. Rightly, the learned Magistrate did not act upon the admission made by the accused at the initial stage. The Court has proceeded with examination of witnesses. When the incriminating circumstances were pointed out and the accused was asked to offer his comment on that, once again the accused admitted that it is she, who committed the theft of the jewels from the house of her master. Whether this statement of the accused can be relied upon is the main contention raised in this case.

10. The criminal trial is a quest to arrive at the truth. The rules of evidence and procedure are intended to lend predictability, transparency and also affording certain safeguards in the process. Section 313 is a salutary provision, providing natural justice, enshrined in the maxim audi alteram partem.

11. Though this statement recorded under Section 313 is not a statement made on oath and is not strictly a speaking evidence, yet the statements so made can indeed be taken into consideration at the trial against the accused for the purpose of arriving at the guilt or otherwise of the accused. If the accused in her examination under Section 313 of the Code confesses to the commission of the offences charged with, the Court may rely upon such confession as a corroboration for the evidence already adduced by the prosecution. In other words, even though conviction per se cannot be based upon the statement made under Section 313 of the Code, still the statement under Section 313 of the Code can be used by the Court so far as it corroborates the case of the prosecution. In this case, the confession statement given by the accused corroborates the evidence adduced by the prosecution especially with regard to the confession leading to recovery of the jewels.

12. So far as this case is concerned, the Courts below were safe in convicting the accused, because of the availability of other evidence, de hors the admission made during the questioning under Section 313 Cr.P.C. Therefore, the conviction and sentence imposed by the Courts below cannot be said to be illegal.

13. The final submission made by the learned counsel for the accused is that already she has suffered imprisonment for 1 + year and therefore, the sentence may be reduced to two years to 1 + years and she may be set at liberty. This Court is of the view that this concession has to be given to the accused, as the accused helped the Court in saving the time as well as in arriving at the truth of the matter. It is not as if the accused admitted the offence at the fag end of the trial, finding no escape route, but, it is a case where the accused has accepted the offence even at the inception. This acceptance itself would be an indication of the penance in the minds of the accused. This 1 + year period of incarceration would have definitely transformed the accused, especially, when she has realized her mistake

by admitting the offence.

14. Considering the conduct of the accused, this Court feels that the punishment already suffered by the accused for 1 + year will be sufficient to reform herself. Accordingly, the accused is ordered to be set at liberty, taking into account the fact that she has already suffered punishment for 1 + year. This Criminal Revision Petition is allowed. The bail bonds, if any executed by the petitioner/accused, shall stand cancelled. To 1. I Additional District Judge, Trichy.

2. Judicial Magistrate No.V, Trichy.

3. The Inspector of Police, Ponmalai Police Station, Trichy District.

4. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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