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CRL. R.C. No.1656/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.04.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. NO.1656 OF 2023

S.Guru @ Gururaj

.. Petitioner

- Vs -

State, rep. By Public Prosecutor
Inspector of Police
Udumalaipettai Crime Police Station
Tiruppur District.

.. Respondent

Criminal Revision Case filed u/s 397 and 401 of the Code of Criminal Procedure praying to set aside the judgment dated 13.07.2023 passed in C.A. No.90 of 2023 on the file of the Principal Sessions Judge, Tirupur, confirming the judgment and order of conviction and sentence passed in C.C. No.365 of 2011 dated 19.05.2022 on the file of the learned Judicial Magistrate No.I, Udumalpet and acquit the petitioner.

For Petitioner : Mr. A.Vivekanandan

For Respondent : Mr. A.Gopinath, GA (Crl. Side)



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ORDER

Assailing the judgment of the Principal Sessions Court, Tirupur, in C.A. No.90/2023, in and by which the conviction and sentence imposed on the petitioner herein by the learned Judicial Magistrate No.I, Udumalpet, in C.C. No.365/2011 was confirmed, the present revision has been filed.

2. The brief facts which are necessary for the disposal of the present revision, are as under :-

P.W.1 is a resident of Kurinchi Nagar, Udumalpet and was into the business of sale of Fertilizers and Chemicals. As the house of P.W.1 required some civil works, P.W.1 entrusted the same to one Durairaj, who engaged ten workers, including the accused for the purpose of carrying out carpentry and painting works. It is the further case of the complainant that about 53 ½ sovereigns of gold jewels were kept in the bureau in the room. On 03.05.2011, when the wife of P.W.1 went to attend a festival, she had worn the jewels and upon return, she had replaced the jewels in the bureau.



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Thereafter, the wife of P.W.1, when intended to go for an ear boring ceremony, she had opened the bureau for wearing the jewels at which time she found out that the jewels weighing about 40 sovereigns were missing. Upon finding out the same, Ex.P-1, complaint, had come to be lodged before the Udumalpet Police Station on 3.6.2011 by P.W.11 which was received and a case in Crime No.2205/2011 was registered for the offence u/s 380 IPC.

3. Upon taking up investigation, the Inspector of Police, P.W.8 visited the scene of occurrence and in their presence of P.W.s 4 and 5, P.W.8 prepared the observation mahazar Ex.P-2 and drew the rough sketch, Ex.P-7. Thereafter, P.W.8 examined P.W.1, his wife P.W.2 and the neighbours P.W.s 3, 4 and 5 and recorded their statements.

4. Continuing with his investigation, upon receipt of information, P.W.8 near Iyyappan Temple, on 13.6.2011, arrested the accused in the presence of P.W.6 and another. At that time, the accused came forward and gave a voluntary confession statement in which the accused admitted the theft of the jewels and stated that he had pledged the jewels before Muthoot Finance



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and also converted some of the jewels into ingots. Based on the aforesaid confession statement, P.W.8 accompanied by the witnesses, reached Muthuoot Finance and in the presence of P.W.7, retrieved the jewels under the cover of mahazar Ex.P-10. The accused also took P.W.8 and the witnesses to his place of stay and produced the ingot and other jewels, which were seized under the cover of mahazar, Ex.P-11.

5. Thereafter, P.W.2 was called by P.W.8 to identify the jewels and upon identification of the jewels, the statement of the witnesses were recorded and the seized items were forwarded to the court under cover of mahazar and Form – 91, Exs.P-12 to P-14. Upon completion of investigation, P.W.8 filed the final report against the accused for the offence u/s 380 IPC.

6. To prove the case, the prosecution examined P.W.s 1 to 8 and marked Exs.P-1 to P-14 and M.O.s 1 & 2.

7. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. on the incriminating



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circumstances appearing against him in the evidence tendered by the prosecution witnesses. He denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked.

8. The trial court, on considering the oral and documentary evidence, convicted and sentenced the accused to simple imprisonment for a period of three years together with fine of Rs.1,000/-, in default to simple imprisonment for a period of one month.

9. Aggrieved by the said conviction and sentence, the accused preferred appeal before the Principal District Judge, Tirupur and the appellate court, considering the materials available on record, both oral and documentary, confirmed the conviction and sentence imposed on the accused, aggrieved by which the present revision has been filed before this Court.



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10. Learned counsel appearing for the petitioner submitted that initially P.W.1 had stated that 53 ½ sovereigns of gold jewels were stolen, but later it was reduced to 40 sovereigns, which clearly shows that the complaint itself is an afterthought to falsely implicate the petitioner. It is the further submission of the learned counsel that the petitioner is a close acquaintance of P.W.1 and the jewels were given by P.W.1 to be pledged and the money to be given to P.W.1 for use in the business. However, in view of the close contact of the petitioner with the elder daughter of P.W.1, to sever the intimacy, the complaint has been given against him. It is the further submission of the learned counsel that no finger print was lifted from the bureau in which the jewels were alleged to have been kept and, therefore, there is no link, linking the accused with the commission of the theft. It is further submitted that though more than 10 workers were employed in the job at the residence of P.W.1, yet, the petitioner was singled out as the accused without there being any connecting material against him. Further, there is no material placed by the prosecution to zero in on how the accused was found to be the person, who is alleged to have stolen the jewels.



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11. It is the further submission of the learned counsel that the claim of the prosecution with regard to the petitioner stealing the jewels have not been established, as no finger prints of the petitioner are alleged to have been found in the bureau in which the jewels were kept. It is the further submission of the learned counsel that the alleged date of stealing of the jewels has not been spoken to by the prosecution. In fine, it is the submission of the learned counsel that the case of the prosecution bristles with very many inconsistencies, infirmities and contradictions, which benefit has to enure in favour of the petitioner and the petitioner is entitled for acquittal at the hands of this Court.

12. Per contra, learned Government Advocate (Crl. Side), appearing for the respondent submitted that the findings recorded by the appellate court, which is based on proper appreciation of materials and documents placed during trial and also appreciating the approach of the trial court, clearly establish that the petitioner has committed the offence. It is the further submission of the learned Government Advocate that the accused had taken the police to Muthoot Finance from where the pledged jewels were seized



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and further, which fact was very much within the knowledge of the accused and, therefore, it clearly establishes that it is the accused, who had stolen the jewels and pledged the same with Muthoot Finance. The act of the accused had been spoken to by P.W.7, the Manager of Muthoot Finance, which evidence has not been shaken in the least by the accused.

13. It is the further submission of the learned Government Advocate that the bureau being handled by very many persons, which was within the knowledge of the accused, who had been doing carpentry/painting works at the residence of P.W.s 1 and 2 and the act of stealing having taken place over a period of a month, non-finding of finger print in the bureau would not in any way be of any assistance to the petitioner, moreso, when the petitioner, has identified the jewels, which he had pledged at Muthoot Finance.

14. It is the further submission of the learned Government Advocate that P.W.2 had identified the jewels, which were seized from Muthoot Finance as her jewels and the pledging of the same by the accused, as spoken to by P.W.7, the prosecution has clearly proved that the accused had stolen



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the jewels, which were pledged at Muthoot Finance. In fine, it is the submission of the learned Government Advocate that the prosecution, through clear and cogent evidence had proved the culpability of the accused in the commission of the offence, which has been properly appreciated by the courts below and, therefore, this Court, in exercise of its revisionary jurisdiction shall not interfere with the same.

15. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record, both oral and documentary.

16. The scope of revision is limited, as has been laid down in a catena of decisions by the Courts that unless there is perversity and arbitrariness in the orders passed by the Courts below, the revision court shall not interfere with the said finding. Therefore, keeping in mind the aforesaid ratio, this Court will now proceed to analyse the materials available on record to find out whether the order passed by the appellate court confirming the order of the trial court suffers the vice of perversity and arbitrariness.



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17. A perusal of the judgment of the appellate court with regard to the findings regarding lack of fingerprints in the bureau as also the date on which the jewels were alleged to have been stolen, the findings could in no manner be termed to be perverse, as it is not the case of the prosecution that all the jewels were stolen on a particular day. The case of the prosecution is only to the extent that 40 sovereigns of jewels were stolen between the period 03.05.2011 and 03.06.2011, i.e., over a period of one month. It is not a case of robbery in which burglars have robbed the jewels so as to pointedly say that the jewels were missing on a particular day. The last of the occasion that the jewels were used by P.W.2 on 03.05.2011 and, thereafter, when it was about to be used on 03.06.2011, it was found to be missing, therefore, putting a particular day on which the jewels could be deemed to have been stolen is wholly impossible and rightly the said aspect was appreciated by the appellate court to negative the said contention, with which this Court is in complete agreement.



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18. Insofar as the contention that there were no fingerprints identifiable to that of the accused is concerned, it is to be pointed that the fingerprint on the bureau would be of no significance, even if some fingerprints were lifted, as the accused as also many other persons were handling the bureau in the light of the work, which they were doing at the residence of P.W.1. Therefore, the said contention also is of no assistance to the petitioner and rightly it has been held so by the appellate court.

19. Coming to the issue of how the petitioner was zeroed in as the accused, who stole the jewels, it is the specific case of P.W.8 that upon secret information, the investigating officer apprehended the accused. The investigating agency cannot be made to divulge the secret source of information which led to the accused being apprehended. This Court could only appreciate, whether the accused had committed the offence.

20. In this backdrop, P.W.7, the Manager of Muthoot Finance, where the accused is alleged to have pledged the jewels, has specifically spoken about the fact that it was the accused, who pledged the jewels. In spite of



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cross examination, there was no contradiction elicited from P.W.7. Though it was the counter case on behalf of the accused that P.W.1 and the accused were friends and P.W.1 had given the jewels to the accused to pledge the same and give him the money, however, except for putting up the said theory, there is no material which supports the said theory. When a specific defence is taken on behalf of the accused, by putting up another theory, it is for the accused to prove the same through evidence. Merely putting up a theory without any evidence to support the same would not be of any use to the accused.

21. In this regard, it is to be pointed out that when two views are possible, though it is the ratio that the view which is beneficial to the accused should be adopted, however, it is to be pointed out that even in that scenario, there should be some material supporting the view projected on behalf of the accused and merely putting up a view without corroborating the same through probable and possible evidence, the accused cannot gain any benefit.



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22. In the present case, though such a theory was advanced on behalf of the accused that on P.W.1 giving the jewels and asking the accused to pledge the same and give him the money for business purpose, however, in the absence of any material to substantiate the said theory, the view projected by the defence would not give any benefit to the accused, which has been rightly appreciated by the appellate court and, therefore, no interference is warranted with the said finding as well.

23. One other ground which has been advanced by the accused is that the closeness of the accused with the elder daughter of P.W.1 had prevailed upon P.W.1 to fasten the allegation on him so as to sever the relationship. However, as pointed out above, even in this regard, there is no material to substantiate the said contention. There was no elicitation on behalf of the defence to support the said theory. When the defence puts across a theory, it is for the defence to substantiate the same and putting holes in the prosecution version without being able to substantiate the same would not give any leverage to the accused to seek for acquittal.



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24. It is to be pointed out that not only the jewels were pledged by the accused, which has been spoken to by P.W.7, but there was seizure in the form of gold ingots from the accused from his residence, which was identified by the accused as the jewels, which were stolen and formed into ingots. There was no explanation from the accused as to the possession of stolen property, which he had pledged with Muthoot Finance, which has been spoken to by P.W.7 and in the absence of proper explanation u/s 114 (A) of the Evidence Act, the inference has to necessarily go against the accused and the courts below have rightly appreciated the same and rendered a finding fastening the guilt on the accused.

25. The defence has thrown many wrenches into the prosecution case in the form of intimacy of the accused with the elder daughter of P.W.1, the friendly acquaintance of the accused and P.W.1 which had led to the jewels being given by P.W.1 to the accused for being pledged and money given to him, however, the defence have not probalised the said theories and the multiple theories put forth by the defence clearly establish that the defence did not have a probable explanation to the prosecution case.



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26. Except for the above, no infirmities or contradictions, which would cast a serious doubt on the prosecution version have been pointed out by the accused to show that the findings arrived at by the courts below are arbitrary and perverse. In the absence of any such material, this Court has no other option but to sail along with the order passed by the courts below in convicting the accused.

27. Further, it should not be lost sight of that the accused was also proceeded with in another case in C.C. No.324/2017 in which the accused was convicted and sentenced to one year simple imprisonment. Therefore, necessarily, an adverse inference has to be drawn against the accused with regard to the offence, which is the subject matter of issue in the present case.

28. All the aforesaid materials have been rightly appreciated by the courts below, while returning a verdict of guilt on the accused and the said findings does not deserve any interference and the conviction recorded by the courts below deserve to be confirmed.



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29. Coming to the issue of sentence for the offence u/s 380 IPC, the accused had been sentenced to simple imprisonment for a period of three years and consequent upon the confirmation of sentence, the accused is under incarceration for a period of 555 days. Similarly, in C.C. No.324/2017, in which the accused had been sentenced to one year simple imprisonment, the accused had served the said sentence and in the said case, he had been incarceration for a period of 528 days, as the accused is serving the sentence imposed on him in the present case.

30. Learned counsel, pointing out the above, prayed that leniency may be granted to the accused and the sentence imposed on him may be reduced so that the accused may be given an opportunity to redeem himself and lead a subdued life, as the offence in the present case relates to the year 2011 and the one in C.C. No.324/2017 relates to the year 2017.

31. Considering the fact that the accused had been under incarceration for a period of more than a year and a half in the present case and he had



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completed his sentence in C.C. No.324/2017 and keeping in mind that the primordial concern of criminal jurisprudence is the reformation of the accused and it is not merely a punishing statute, this Court is inclined to accede to the request of the learned counsel for the petitioner and reduce the period of sentence to the period already undergone, thereby, giving a chance to the accused to redeem himself and lead a legal life without committing any further acts such as the above.

32. In the result, this appeal is dismissed confirming the conviction imposed on the revision petitioner by the Principal Sessions Judge, Tiruppur in C.A. No.90/2023, but the sentence imposed on the revision petitioner with regard to the offence u/s 380 IPC is modified from three years and instead the revision petitioner is sentenced to imprisonment for a term equivalent to the period of incarceration already undergone. The fine amount and the default sentence in the event of non-payment of fine, as ordered by the lower appellate court are confirmed.



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33. It is reported that the revision petitioner is in jail in connection with this case. In view of the aforesaid order, the revision petitioner, who is presently lodged in Central Prison, Coimbatore, is directed to be released forthwith unless his presence is required in connection with any other case.

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To

1. The Principal District Judge
Tiruppur.
2. The Judicial Magistrate No.I
Udumalpet.
3. The Inspector of Police
Udumalaipettai Crime Police Station
Tiruppur District.
4. The Public Prosecutor
High Court, Madras.



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M.DHANDAPANI, J.

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