

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.R.C.No.366 of 2009

&

M.P.No.1 of 2009

1.Ravikumar
2.Asiam Ali

.... Petitioners

vs

The State represented by
The Inspector of Police
Shevapet Police Station
Salem District

.... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed in CrI.Appeal No.51 of 2008 dated 06.01.2009 by learned First Additional Sessions Judge, Salem by confirming the order in C.C.No.311/2006 dated 12.02.2008 by learned Judicial Magistrate No.3, Salem by allowing the Criminal Revision.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.C.Iyyapparaj, Govt.Advocate

सत्यमेव जयते
O R D E R

This revision is preferred against two concurrent judgments of the Courts below convicting the petitioners for offences under Sections 457(2) and 381 IPC.

2. The prosecution case was that the first petitioner, who was an employee of a goldsmith shop, along with the second petitioner opened the shutter of the said shop on the night of 12.05.2006 using a duplicate key, entered thereinto and committed theft of gold ornaments worth Rs.1,92,000/- and cash Rs.2,500/-. On the complaint of the owner of the shop/PW-1, a case in Crime No.1267 of 2006 on the file of respondent for offences under Sections 457, 380 and 381 IPC was registered.

Upon completion of investigation and filing of charge sheet informing commission of such offences. The case was tried in C.C.No.311 of 2006 on the file learned Judicial Magistrate III, Salem.

3. Before the trial Court, prosecution examined 8 witnesses, marked 8 exhibits and six material objects. Two witnesses were examined on behalf of the defence and five exhibits were marked.

4. On appreciation of materials before it, the trial Court, under judgment dated 12.02.2008, rendered a finding of conviction and sentenced petitioners/accused as follows:

Accused	Offence	Sentence
A1 & A2	457(2) IPC	2 years R.I. and fine of Rs.100/- each i/d 6 months S.I.
A1	381 IPC	2 years R.I. and fine of Rs.100/- i/d 6 months S.I.
A2	380 IPC	2 years R.I.

The trial Court directed that sentences to run concurrently. The appeal of the petitioners in C.A.No.51 of 2008 came to be dismissed by learned I Additional Sessions Judge, Salem under judgment dated 06.01.2009. There against, this revision.

5. Heard learned counsel for petitioners and learned Government Advocate (Crl.side).

6. Learned counsel for petitioners submitted that the occurrence took place between 06.05.2006 and 11.05.2006. It was the evidence of P.W.1/complainant that he had gone out of station on 06.05.2006 and returned on 11.05.2006. It is his further contention that the prosecution allegation of recoveries from the accused is false. D.W.1, father of second petitioner, had caused a telegram, Ex.D.1, addressed to the Secretary, Home Department informing that the first petitioner had been taken into custody on 19.05.2006 and D.W.2, mother of first petitioner, had addressed letter to the State Human Rights Commission informing that the second petitioner had been taken into custody on 18.05.2006. The evidence of P.W.2 was to the effect that police visited the scene of crime even on 16.05.2006. However, the First Information Report in the case was registered only on 20.05.2006. Therefore, it is clear that the original information given to the police stands suppressed. Learned counsel submits that petitioners/accused are not the owners of the jewelleryes that which have been shown as stolen and recovered from them.

7. Learned Government Advocate [Crl.side] submitted that the

Courts below had rendered a finding of conviction on fair appreciation of materials available before them. The recovery at the hands of the accused duly stands proved through the evidence of P.Ws. 5 and 6, who were witnesses thereto. The judgments of Courts below did not call for any interference.

8. This Court has considered the rival submissions.

9. The evidence of P.W.3 does serious damage to the prosecution case. There would be no occasion for police being at the scene of crime on 16.05.2006, if nor complaint had been lodged till 20.05.2006. The recovery at the hands of the accused are shown to be of 21.05.2006 whereas the FIR is being given the date 20.05.2006. The recoveries are: M.O.1-Gold ear rings -23 pairs, M.O.2- T.V.Model ring big size 8, M.O.3- ring small size 1, M.O.4-Designer ring big size 1, M.O.5- Flower design rings big -22, M.O.6- Small size ring -10, M.O.7- Small gold chain-1, M.O.8- Gold ear ring 15 pairs, M.O.9- gold nose rings 75 pairs in the same sequence informed in the FIR. Such would be a position occasioned by preparation of FIR after effecting 'recoveries'.

10. Given the various discrepancies in the prosecution case informed above, the Courts below have fallen into error in convicting the petitioners. This Criminal Revision shall stand allowed. The judgment of learned First Additional Sessions Judge, Salem passed in Crl.Appeal No.51 of 2008 dated 06.01.2009 confirming the judgment of learned Judicial Magistrate III, Salem in C.C.No.311/2006 dated 12.02.2008 shall stand set aside. Petitioners are acquitted of all charges. Fine amount, if any, paid by petitioners shall be refunded to them. Bail bonds, if any, executed by petitioners shall stand cancelled. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The First Additional Sessions Judge, Salem

2.The Judicial Magistrate III, Salem

3.The Public Prosecutor,

High Court, Madras.

+lcc to Mr.B.Vasudevan, Advocate, S.R.No.62811

lrs (CO)

kra(12/01/2016)

Crl.R.C.No.366 of 2009