

Bail Slip

The Petitioners/Accused namely 1.K.Subburu @ Subramani, Aged 27 years S/o. Mr. Kuppusamy 2. R.Subramani, Aged 22 years S/o. Raman were directed to be released on Bail as per order of this Hon'ble Court dated 27.04.2011 in CrI.MP. No.1 of 2011 in CrI. RC. No. 577 of 2011 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.577 of 2011

1. K.Subburu @ Subramani

2. R.Subramani ...Petitioners/Appennants/Accused

Vs

The State. Rep. by
The Inspector of Police,
Sirumugai Police Station,
Coimbatore District.
(Crime No.299 of 2005)

...Respondents/Respondent/Complainant

Prayer:-

This Criminal Revision is filed under Section 397 & 401 of Cr.P.C., to set aside the order dated 18.03.2011 made in CrI.A.No.252 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court -I, Coimbatore confirming the order dated 15.11.2010 in C.C.No.345 of 2005 on the file of the Judicial Magistrate, Mettupalayam.

For petitioners : Mr.V.Sivakumar

For respondent : Mrs. M.F.Shabana,
Gov. Advocate (CrI. Side)

O R D E R

The petitioners are A1 and A2 in C.C.No.345 of 2005. They stood charged for an offence under Section 380 IPC and the trial Court convicted the accused and sentenced them to undergo

rigorous imprisonment for one year and also imposed a fine of Rs.1000/- each. Aggrieved over the same, they filed appeal in C.A.No.252 of 2010 on the file of Additional District Sessions Judge, Fast Track Court No.I, Coimbatore. The appellate Court also confirmed the conviction and sentence passed by the trial court and dismissed the appeal. Challenging the same, the present revision has been filed.

2. The case of the prosecution in brief is as follows:-

P.Ws.1 to 4 are security personnel, working in the South India Viscos Company, Sirumugai, Coimbatore District. On 26.09.2005, at about 6.00 p.m., when they were on rounds, they found two persons in the first floor of the main office and they were carrying solar board and copper cable, worth about Rs.16,000/-. Immediately, they caught hold of the accused and handed over them in the police station.

3. P.W.6, Sub-Inspector of Police, working in the respondent police, on receipt of the complaint, registered a case in Crime No.299 of 2005 for the offence under Section 380 IPC and sent the First Information report, Ex.P.4 to the Judicial Magistrate and to the higher officials. He also seized the stolen property under Form 95 and sent the stolen property to the judicial Magistrate. Then, he arrested the accused, thereafter proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.2, and drew rough sketch, Ex.P.6 and recorded the statement of the witnesses. After completing investigation, he filed a charge sheet under Section 380 IPC.

4. Based on the above, the trial Court framed a sole charge for the offence under Section 380 IPC and the accused denied the same. In order to prove its case, prosecution examined 6 witnesses and exhibited 6 documents, besides 2 Material Objects.

5. Out of the witnesses examined, P.Ws 1 to 4 are security personnels, who are working in the South India Viscos Company, Sirumugai, Coimbatore District. According to P.W.1., on 26.09.2005, at about 6.00 p.m., when he was on rounds, he saw both the accused stealing the solar copper board and copper cable. Immediately, he along with stolen material, handed over to the respondent police. P.W.2 is also a security personnel working in the same company. He along with P.W.1 caught hold of the accused. P.W.3 is yet another security personnel, who is a witness to the observation mahazar. He was also present in the scene of occurrence and he caught hold of the accused. P.W.4 is the witness to the observation mahazar and rough sketch. He is also working as security officer in the company. P.W.5 is

another security, who also caught hold of the accused along with P.Ws.1 and 2. P.W.6 is the Sub Inspector of police, who registered the First Information Report, investigated the case, arrested the accused and on completing the investigation, he laid charge sheet against the accused.

6. Having considered all the above material, the trial Court convicted the petitioners/A1 & A2 as stated in the first paragraph of the judgment. Challenging the same, the petitioners/A1 & A2 filed an appeal in C.A.No.252 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore and the lower appellate court dismissed the appeal thereby confirmed the conviction and sentence. Aggrieved over the same, the petitioners are before this Court with this Criminal Revision.

7. I have heard Mr. V.Sivakumar, learned counsel appearing for the petitioners and Mrs. M.F.Shabana, Gov. Adv. (crl. Side) appearing for the respondents.

8. The learned counsel for the petitioners submit that there is material contradiction in the evidence of P.Ws.1 to 5. According to P.Ws.1, 2 and 3, after the occurrence, they took the accused along with stolen articles and handed over the same to the police. P.W.5 in the cross examination has stated that the police came to the company and arrested the accused. Apart from that none of the witnesses identified the accused and no test identification parade was conducted and no one identified the accused to the police and there is also discrepancy in the charge. As per the charge, the accused said is to have been stolen 40 kg of copper cable and solar board. In view of the material contradiction, the petitioner is entitled for acquittal.

9. Per contra, the learned counsel appearing for the respondent would submit that there are 5 eyewitnesses to the occurrence. All of them are working in the company and they caught hold of the accused and handed over them to the police along with stolen property. Hence, there is no reason to disbelieve the same and since the accused are caught red handed, there is no need to conduct test identification parade.

10. I have considered the rival submissions.

11. P.Ws 1 to 5 are working as security in the South India Viscos Company. It is the consistent evidence of all the witnesses that at the time of occurrence, they are all going around the company and they saw both the accused in the first floor of the main office, stealing solar board and copper cable and they caught the accused red handed and thereafter, they took

the accused to the police station along with the stolen articles. Immediately, a crime was registered in Crime No.299 of 2005 and the stolen articles were seized under Form-95, which was also sent to the concerned Judicial Magistrate. Hence, there is no reason to disbelieve the evidence of P.Ws.1 to 5.

12. So far as the test identification parade is concerned, all the accused were caught red handed in the scene of occurrence by the security personnels and they took them to the police station along with the stolen materials and handed over them to the police. Since the identity is well known to the witnesses, there is no necessity to conduct separate test identification parade.

13. So far as the discrepancy pointed out by the learned counsel appearing for the petitioners with regard to the contradiction in the evidence of P.W.5, it is only a minor contradiction that whether the police came to the scene of occurrence and the witnesses went to the police station is not any way affect the prosecution case. Hence, I find no reason to interfere with the judgment of the court below.

14. So far as the sentence is concerned, the petitioners are convicted and sentenced to undergo rigorous imprisonment for one year. Taking into consideration the age of the accused and the fact that they have no bad antecedents and there is a chance of reformation. In the above circumstances, the sentence imposed on the petitioners are reduced to rigorous imprisonment for six months.

15. Accordingly, this Criminal Revision Petition is partly allowed and conviction imposed on the petitioners under Section 380 IPC, is confirmed and the sentence is modified to Rigorous Imprisonment for six months. The period of sentence already undergone by petitioners/accused shall be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Additional District and Sessions Judge,
Fast Track court - I,
Coimbatore.

-do- Thro 'The Prl. Sections Judge,
Coimbatore.

2. The Judicial Magistrate,
Mettupalayam.

3. The Chief Judicial Magistrate,
Coimbatore (For Information).

4. The Inspector of Police,
sirumugain Police Station,
Coimbatore.

5. The Public Prosecutor,
High court, Madras.

+2cc to Mr.Siva Kumar, Advocate, S.R.No.76170

NMI (CO)
RS (09/02/2017)

Cr1.R.C.No.577 of 2011

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