

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1144 of 2016

Periyasamy
S/o.Irusan

.. Petitioner/Appellant/Accused

vs.

State by

The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.

Crime No.135 of 2012

.. Respondent/Respondent/Complainant

Criminal Revision case filed under Section 397 and 401 Cr.P.C. against the conviction imposed in the judgment of learned III Additional District and Sessions Judge, Gobichettipalayam, passed in C.A.No.100 of 2016 on 14.09.2016, confirming the conviction imposed in the judgment of learned Judicial Magistrate I, Gobichettipalayam, passed in C.C.No.67 of 2012 on 26.04.2016.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.K.Madhan
Government Advocate (Crl.side)

O R D E R

This revision arises against concurrent judgments of Courts below convicting petitioner for offence u/s.379 IPC and sentencing him to undergo 6 months R.I. and fine of Rs.2,000/- i/d. 1 month S.I.

2. The prosecution case was that on 03.02.2012 at about 01.30 p.m., petitioner/accused had stolen 18 goats belonging to de facto complainant/PW-1. On the complaint of PW-1, a case was registered in Crime No.135 of 2012 on the file of respondent. Upon completion of investigation, a charge sheet was laid informing commission of offence u/s.379 IPC and the same was taken on file in C.C.No.67 of 2012 on the file of learned Judicial Magistrate I, Gobichettipalayam.

3. Before the trial Court, the prosecution examined eight witnesses and marked seven exhibits and fifteen material objects. None were examined on behalf of the defence nor were any exhibits marked.

4. On examination of materials before it, the trial Court found the charges proved and convicted the petitioner for offence u/s.379 IPC and sentenced him to undergo 6 months R.I. and fine of Rs.2,000/- i/d. 1 month S.I. There against, petitioner/accused preferred C.A.No.100 of 2016 on the file of learned III Additional District and Sessions Judge, Gobichettipalayam, which came to be dismissed under judgment dated 14.09.2016. Hence, this revision.

5. Heard learned counsel for petitioner and learned Government Advocate [Crl.side].

6. Learned counsel for petitioner submits that the occurrence took place on 03.02.2012 and the complaint was lodged only on 23.02.2012, i.e., after twenty days of the occurrence. There was no explanation on the side of prosecution for the delay in preference of complaint. Learned counsel submits that from the evidence of PW-1 that she had preferred complaint on 03.02.2012 itself, i.e., on the date of occurrence, it was clear that the original First Information Report has been suppressed and Ex.P1, First Information Report, is an improved version, which could only be treated as a statement u/s.161 Cr.P.C. Even as per the prosecution case, PW-4, an eye witness to the occurrence, had informed the occurrence to PW-1 only after 20 days. PW-2's evidence is hearsay and hence, it is inadmissible. In the absence of any identification parade, the identification of petitioner/accused by PWs.2 to 4 and 6 in the Court for the first time was unbelievable. The evidence of PW-6, a stock witness, has completely been falsified in the cross-examination. The evidence of PW-1 and PW-16 were contradictory regards age, size and number of goats. Besides all these discrepancies, the injuries sustained by petitioner/accused have properly not been explained. Submitting as above, learned counsel submits that the prosecution has failed to establish its case beyond all reasonable doubt, that the Courts below have erred in convicting the accused and prays for acquittal of petitioner/accused.

7. Heard learned Government Advocate [Crl.side] on the above submissions.

8. PW-4 has deposed to having witnessed the commission of offence by petitioner/accused and of having informed PW-1 twenty days after the occurrence. He has also spoken to informing the number of the vehicle used by petitioner/accused. PW-4's evidence is most artificial and the artificiality of the prosecution case is further borne out through the evidence of

PW-3, a neighbour of de facto complainant/PW-1, who had spoken to having witnessed the goats of PW-1 having been loaded on to a mini van on the very night of the occurrence viz., 03.02.2012. If indeed such information had been available to PW-3, it stands to reason to expect PW-3 to have immediately informed PW-1 as the loss of goats necessarily would be within public knowledge and particularly that of a neighbour. That PW-4 would remember the number of the vehicle used in commission of offence twenty days thereafter is difficult to believe. Adding to the woes of the prosecution, it is the evidence of PW-1 that she had preferred a complaint on the very date of occurrence. Accepting the submission of learned counsel for petitioner that the original information stands suppressed, the Criminal Revision shall stand allowed.

In the result, the Criminal Revision shall stand allowed and the judgment of judgment of learned III Additional District and Sessions Judge, Gobichettipalayam, passed in C.A.No.100 of 2016 on 14.09.2016, confirming the judgment of learned Judicial Magistrate I, Gobichettipalayam, passed in C.C.No.67 of 2012 on 26.04.2016, shall stand set aside. Petitioner is acquitted of charges. Fine amount, if any, paid by him shall be refunded. Bail bonds, if any, executed by him shall stand cancelled.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The IIIrd Additional District and Sessions Judge, Gobichettipalayam.

2.The Judicial Magistrate No.I, Gobichettipalayam.

3.The Inspector of Police, Gobichettipalayam Police Station, Erode District.

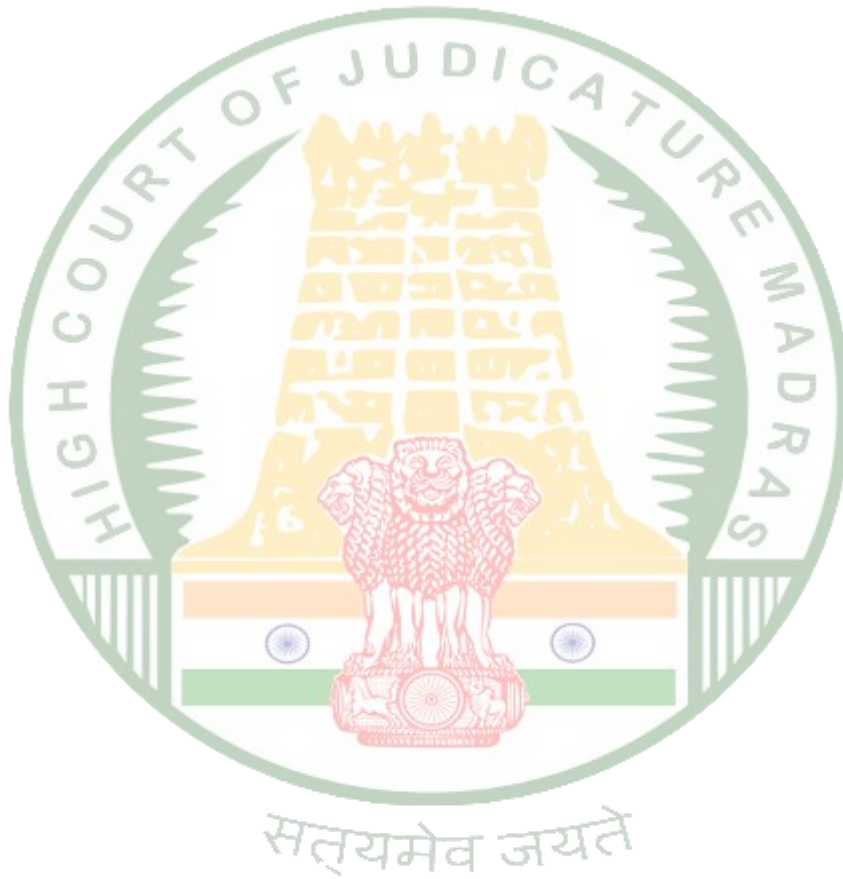
4.The Superintendent, Central Prison, Coimbatore.

5.The Public Prosecutor,
High Court, Chennai.

+lcc to Mr.n.Manokaran, Advocate Sr.59359

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srg 30/11/2016



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