

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1816 of 2011

Annammal
W/o.Late Iruthayaraj

... Petitioner

VS

The State represented by
The Inspector of Police,
Mappedu Police Station,
Mappedu.
Tiruvallur District.
Crime No.104 of 2006

... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of learned Additional District Judge, Fast Track Court III, Tiruvallur, passed in C.A.No.38 of 2011 on 15.12.2011 confirming the judgment of learned Judicial Magistrate II, Tiruvallur, passed in C.C.No.171 of 2006 on 27.06.2011.

For Petitioner

: Mrs.S.Nishanthi

For Respondent

: Mr.V.Arul

Additional Public Prosecutor

ORDER

This revision is preferred against judgment of learned Additional District Judge, Fast Track Court III, Tiruvallur, passed in C.A.No.38 of 2011 on 15.12.2011 confirming the judgment of learned Judicial Magistrate II, Tiruvallur, passed in C.C.No.171 of 2006 on 27.06.2011.

2. Prosecution case is that PW-1 and PW-2 are husband and wife. PW-2 is the daughter of PW-7. PW-1 and PW-2 are residing in the ground floor and PW-7 is residing upstairs. The accusation is that on 24.07.2006, petitioner/accused, who is a servant maid of PW-7, took the key of PW-1's house from PW-7's house without her knowledge, entered the house and took away cash of Rs.1,74,000/- and jewels weighing 4 sovereigns, which were kept in a bureau. On the complaint of PW-1, a case was registered in Crime No.104 of 2006 on the file of respondent for offences u/s.454 and 380 IPC. Upon completion of investigation and filing of charge sheet, the case was tried in C.C.No.171 of 2006 on the file of learned Judicial Magistrate II, Tiruvallur.

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3. Before trial Court, prosecution examined 11 witnesses and marked 10 exhibits and 4 material objects. 2 witnesses were examined on the side of defence and 2 exhibits were marked. On appreciation of materials before it,

trial Court, under judgment dated 27.06.2011, convicted the accused for offences u/s.454 and 380 IPC and sentenced her to 3 years S.I. and fine of Rs.250/- i/d 4 months S.I. for offence u/s.454 IPC and 3 years S.I. and fine of Rs.250/- i/d 4 months S.I. for offence u/s.380 IPC. Trial Court directed that sentences run concurrently. There against, petitioner preferred C.A.No.38 of 2011 on the file of learned Additional District Judge, Fast Track Court III, Tiruvallur, which came to be dismissed under judgment dated 15.12.2011. Hence, this revision.

4. Heard learned counsel for petitioner and learned Additional Public Prosecutor. Perused the materials on record.

5. It is an admitted prosecution case that petitioner/accused was an employee at the house of PW-7 over a period of 10 years. Prosecution itself has admitted that petitioner/accused was able to commit the offence since she was aware of PW-2 locking the bureau and handing over the key to PW-7, who placed the same under a pillow and went to sleep. No finger prints have been lifted from the bureau or keys thereto. Prosecution case of offence u/s.380 IPC rests on the recovery of cash and jewels from petitioner/accused. Although Form-95 in respect of such recovery informs the recovery from petitioner/accused on 25.07.2006 at 01.00 a.m. and the same has been sent to

Court on the same day, the mahazar witness examined to speak to the arrest and recovery from petitioner/accused is PW-9. PW-9 has spoken to arrest and recovery having been effected at 11.30 a.m. More importantly, PW-9, in cross, has admitted to enjoying a very close relationship with the prosecution party and has admitted to the presence of around 50 persons at the time when recovery was effected. None other has been examined to speak on recovery effected from petitioner/accused and through evidence of DW-1, Manager of Co-operative Bank, wherein PW-9 was employed as a cashier and through marking Ex.D2, attendance register, it has been shown that PW-9 was at his place of employment both in the morning and evening of 25.07.2006. In such circumstance, his evidence of having taken half-a-day leave and thereafter, having stayed away from work the whole day is hard to believe. Recovery effected at the hands of accused becomes suspect. While so, the charge u/s.380 IPC would not hold good. PWs.2 and 7 are daughter and mother. Admittedly, the mother lived upstairs while the daughter lived in the ground floor. Appellant/accused was an employee of PW-7 for over 10 years. In the circumstances, easy and free access to appellant/accused to the residence of PW-1 is but to be accepted. In any event, there is no evidence of her having broken into such dwelling. The charge u/s.454 IPC fails.

The Criminal Revision Case shall stand allowed. The judgment of learned

Additional District Judge, Fast Track Court III, Tiruvallur, passed in C.A.No.38 of 2011 on 15.12.2011 confirming the judgment of learned Judicial Magistrate II, Tiruvallur, passed in C.C.No.171 of 2006 on 27.06.2011, shall stand set aside. Petitioner/accused is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

21.08.2017

Index:yes/no
Internet:yes/no
gm

To

1.The Additional District Judge,
Fast Track Court III,
Tiruvallur.

2.The Judicial Magistrate II,
Tiruvallur.

3.The Inspector of Police,
Mappedu Police Station,
Mappedu.
Tiruvallur District.

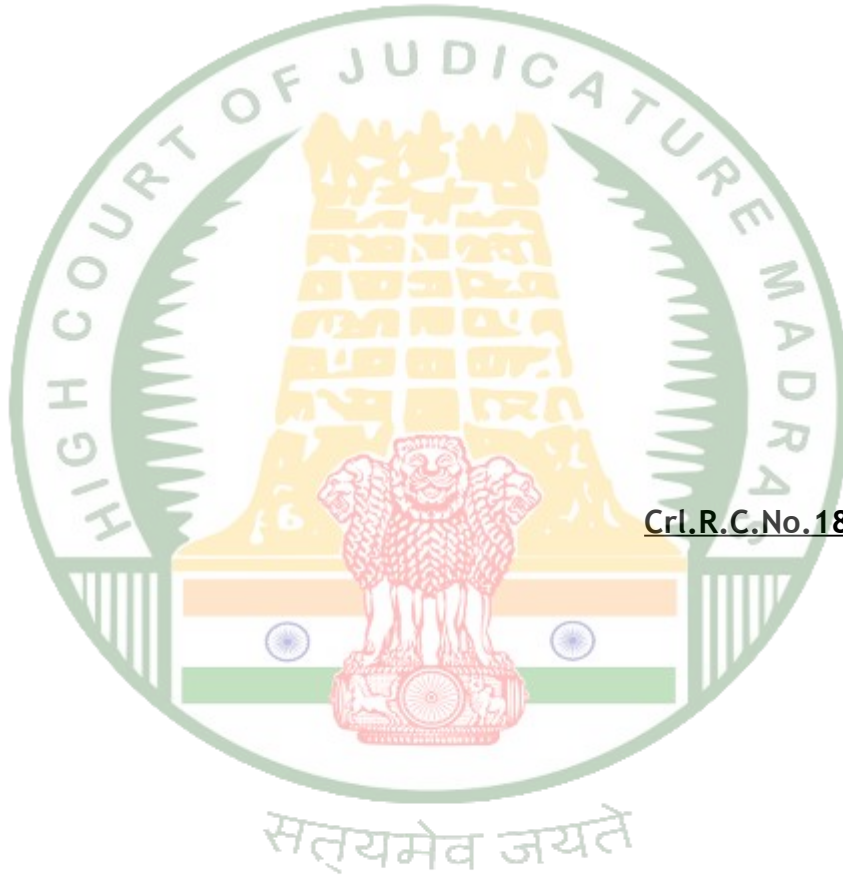
4.The Public Prosecutor,
High Court, Madras.



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C.T.SELVAM, J

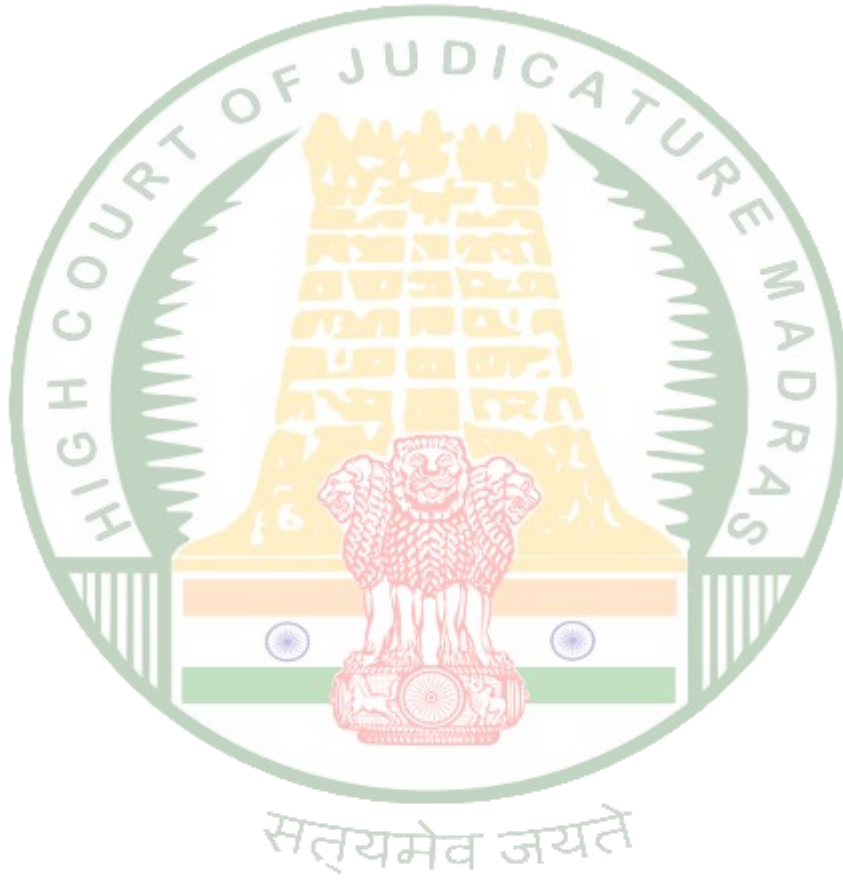
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