



BAIL SLIP

The Appellants/Accused namely Indirajith @ Ibrahim (A1), Nehru (A2), and Selvam (A5), were directed to be released on bail as per order of this Court dated 01/07/2011 made in CRL.MP.No.1 of 2011 in CrI.Rc.850 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON : 01.09.2017
PRONOUNCED ON : 11.12.2017

CRL.RC. No.850 of 2011

1.Indirajith@Ibrahim
2.Nehru
3.Selvam .. Petitioners/Accused 1,2 and 5

..Vs..

State Rep.by
The Station House Officer,
T.R.Pattinam Police Station,
T.R.Pattinam,Karaikal,
Crime No.201 of 2007 .. Respondent/Complainant

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to set aside the judgment passed by the learned Additional Sessions Judge, Karaikal in Criminal Appeal No.6 of 2011 dated 15.06.2011 in partly allowing the appeal by confirming the sentence imposed on the petitioners herein to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 457 (2 counts) and to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 380 (2 counts) of I.P.C and the sentence to run concurrently in the judgment passed by the learned Judicial Magistrate No.II, Karaikal by convicting the petitioners herein to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 457(2 counts) and to undergo three years RI and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 380 (2 counts) of I.P.C and the sentence to run separately by Judgment in C.C.No.158 of 2009 dated 10.03.2011.



For Petitioners : Mr.B.Vijayakumar
Legal Aid Counsel

For R1 : Mr.A.Tamilvanan
Govt.Advocate (Pondicherry)

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ORDER

This Criminal Revision Petition is filed under Section 397 read with Section 401 of Cr.P.C, to set aside the judgment passed by the learned Additional Sessions Judge, Karaikal in Criminal Appeal No.6 of 2011 dated 15.06.2011 in partly allowing the appeal by confirming the sentence imposed on the petitioners herein to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 457 (2 counts) and to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 380 (2 counts) of I.P.C and the sentence to run concurrently in the judgment passed by the learned Judicial Magistrate No.II, Karaikal by convicting the petitioners herein to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 380 (2 counts) of I.P.C and the sentence to run separately by Judgment in C.C.No.158 of 2009 dated 10.03.2011.

2. The accused A1,A2,A5 are the revision petitioners herein.

3. Though, A3 has preferred appeal against the conviction and sentence passed by the trial Court by way of Criminal Appeal No.7 of 2011 before the Additional Sessions Judge, Karaikal, the Additional Public Prosecutor (Pondicherry) has submitted that he has not filed any revision as against the order of confirmation of conviction and sentence passed by the Additional Sessions Judge and this revision is only with regard to accused A1,A2,A5.

4. It is seen from the records that Inspector of Police, T.R.Pattinam Police Station, T.R.Pattinam, Karaikal has filed a final report in Crime No.201 of 2007 against A1 to A7. Since as against A4 and A7 as they have been absconding and NBW was pending, the case has been split-up as against A4 and A7 before the trial Court and new C.C.No.has been given as C.C.No.273 of 2010 by the trial Court. The trial has been conducted as against A1,A2,A3,A5 and A6 and as stated supra, initially, A3 separately filed an appeal before the Sessions Judge confirming his conviction and sentence, but has not preferred any further revision and A6 has not filed any appeal against his conviction



by the trial Court, this revision is only by A1,A2 and A5.

5. The brief facts of the case leading to the filing of this Revision is as follows:-

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i) The complainant is the managing trustee of the Sri Jadaupureshwari Swamy Devasthanam Temple, T.R.Pattinam. On 22.10.2007 the temple was locked as usual, during the night hours and the key was handed over to him. On the next day morning when the temple was opened around 05.30 hrs, it was found that the front door of the temple was broke open and both the locks of the front door as well as the back door were found locked. When the servant of the temple climbed the compound wall and gained entrance into the temple and went inside, he found out the door of the room of Lord Nataraj was found broken and the idle of Lord Nataraj and Amman were found missing. It was found that some one entered the front compound wall of Durgaiamman Temple and gained entry into the temple and the idols were stolen. After six months, the stolen idols were found out. However, the hand, leg of the lord Nataraj idle along with the serpent head were detached and the idols were melted as ingots and other articles were also melted as ingots. The said stolen objects were recovered from the accused Murugesan, Selvam and Indirajith.

6. On receipt of the complaint, the concerned police went to the place of occurrence, examined the witnesses and recorded their statements. The S.I. of Police Krishnan registered a case in Crime No.201 of 2007 u/s.457, 380 I.P.C read with 149 I.P.C. Inspector of Police P.W.4 took up further investigation and he came to know that the accused 1 and 2 were arrested in Crime No.744 of 2007 of Manarkudy Police station and they were detained in Central Prison, Trichy.

7. Both the accused have voluntarily confessed about the theft committed by them, he recorded the same. On 09.12.2008 the third accused was also arrested. While 4th and 5th accused were arrested on 23.12.2008 and their confession statement were recorded in the presence of witnesses and recovered the material objects from the house of the accused Selvam at Maruthapadi and recovered under the cover of mahazar. He also recorded the confession statement of the accused Amasi and recovered the M.Os while he came to his share under the cover of Mahazar. He also recorded the confession of the accused Murugesan and recovered the material objects in the presence of witnesses under the cover of Mahazar. On 21.01.2009 the accused Rajkumar was arrested and his confession was recorded and the material objects were seized under the cover of Mahazar in the presence of witnesses. Then, they charge sheet laid against all the 7



accused u/s.457,380 IPC r/w 34 I.P.C

8. During trial, the Public Prosecutor examined 18 witnesses and marked Ex.P1 to Ex.P15 and M.Os.1 to M.O.5. As the prosecution has proved its case beyond reasonable doubts, the learned Judicial Magistrate-II, Karaikal convicted the appellants u/s.457,380 r/w 148 I.P.C and sentenced them to undergo imprisonment for three years on each count and to pay a fine of Rs.3000/- on each count and to pay a fine of Rs.3000/- on each count in default to undergo simple imprisonment for six months on each count for each accused.

9. By a judgment dated 10.03.2011, the Lower Appellate Court has partly allowed the appeal by confirming the sentence imposed on the petitioners herein to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 457(2 counts) and to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 380 (2 counts) of I.P.C and the sentence to run concurrently in the judgment passed by the learned Judicial Magistrate No.II, Karaikal by convicting the petitioner herein to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 457 (2 counts) and to undergo three years R.I and to pay a fine of Rs.3000/- in default to undergo six months R.I for the offence under Section 380 (2 counts) of I.P.C and the sentence to run separately by judgment in C.C.No.158 of 2009 dated 10.03.2011.

10. Aggrieved against the said conviction and sentence for the alleged offence under Section 457,380 of I.P.C read with 149 I.P.C, the A1,A2,A5 and A3 also filed the Criminal Revision.

11. The learned counsel for the revision petitioners would contend that both the Courts below have committed the gross error in coming to the conclusion that these petitioners have committed the theft of idol in the temple and the confession statement alleged to have been obtained from these accused are in-admissible in evidence and recovery of the stolen article was not proved in the manner known to law and hence, seeks to set aside the conviction and sentence passed by the Courts below.

12. Per contra, the Additional Public Prosecutor for the Puducherry would contend that based upon the complaint given by the Managing Trustee Jadaupureshwarar Swamy Devasthanam temple, T.R.Pattinam for the report of theft on 22.10.2007, the first respondent - police have registered the case in Crime No.201 of 2007 and investigated the matter and during the course of the investigation, the accused 1,2,5 and 4 have given a confession statement and based upon the admissible portion of the



confession statement, recovery has been made in the presence of independent witnesses and the same was seized in the presence of independent witnesses and the investigation has been completed in the manner known to law and recovery of stolen articles-swamy idols were marked as M.O.1 and while M.O.2,M.O.3,M.O.4 are ingots and M.O.5 is the brass ingots and hence, made submission in support of the order of the Courts below.

13. After hearing the rival contentions of both the parties and after perusing the records and the orders passed by the Courts below, it is seen that P.W.1 Ganapathy, Managing Trustee of Sri Jadaupureshwarar Swamy Devasthanam Temple (in short 'trustee of the temple') was examined as P.W.1. He set the criminal law into motion by filing the Ex.P1, complaint dated 23.07.2007, wherein, he has clearly stated about the factum of missing of swamy idol kept in the temple on 23.10.2007. With regard to the factum of missing of the swamy idols in the temple, P.W.2 Saminathan and P.W.3 Muthukumar and P.W.4 Natarajan Gurukul attached to the temple have deposed regarding the factum of theft as stated in the Ex.P1, complaint. Police witnesses P.W.14 and P.W.15 have deposed regarding the receipt of the complaint and part of the investigation while, P.W.16,P.W.17,P.W.18, the other police witnesses deposed regarding the further investigation conducted and arresting of the accused and recording of their confession statements. The admissible portion of the confession statement given by P.W.1 is marked as Ex.P3 while that of A2 is Ex.P4 and A5 is Ex.P5 and A4 is Ex.P6.

14. On perusal of the evidence of P.W.7 Pakkirisamy,V.A.O attached to village of the pond about the engagement of the fisherman to dive to pond water and to search for any idol as spoken to by the accused A1,A2,A4,A5 as disclosed by the fact in their admissible portion of the confession statement which are marked Ex.P3 to P6. The service of P.W.6 Anbalagan, the fisherman engaged by the investigation agency with the revenue witness P.W.7 Pakkirisamy, V.A.O of the said pond are clear and cogent.

15. On a combined reading of the oral evidence of P.W.6 Anbalagan diver P.W.7 Pakkirisamy, V.A.O of the village in which the pond situated clearly demonstrate regarding the recovery of the M.O.1.

16. At this juncture, it remains to be stated that P.W.8 Manimaran P.W.9 Kanikodi P.W.10 Duraikannan who are witnesses to the confession statement that are marked as Ex.P3 to P.6 nothing worthwhile has been elicited in which cross examination of the attester of the confession statement namely P.W.8 to P.W.12 assumes significance.



17. Besides, the fact that based upon the admissible portion of the confession, Ex.P3 to Ex.P6, the services of the fisherman P.W.6 who dived into pond water and has recovered M.O.1 and thus, both the Courts below have come to the conclusion that in the absence of any worthwhile answer has been elicited from the attester of the confession statement and which has lead to recovery of fact of stolen article has brought out by the P.W.6 Anbalagan from the pond which is under the review of P.W.7 has clearly come to the conclusion that based upon the admissible portion of the confession statement of A1,A2,A3,A4,A5,A6 in Ex.P1,Ex.P2,Ex.P3,Ex.P4,Ex.P5,Ex.P6 leading to the recovery of M.O.1 has brought out by the P.W.6, fisherman and hence, both the Courts below have concurrently held that Ex.P3 to P6 have been proved in the manner known to law is well sustainable in law and in the absence of any worthwhile contradiction being elicited in the process of recovery of the stolen article and the seizure thereof. P.W.9 and P.W.10 are attester of the seizure mahazar under Ex.P7,P8,P9 and P11 with regard to seizure of the material object M.O.1 to M.O.5. This Court is of the considered view that the said finding rendered by the trial Court as confirmed by the lower Appellate Court does not warrant any interference by this Court.

18. Considering the entirety of the circumstances, this Court finds that the factum of the commission of theft of Nataraj idol from the said temple by lurking and break opening of temple during night as spoken to by P.W.2,P.W.3,P.W.4 has been established and P.W.1, Managing Trustee of the temple and based upon the admissible portion of the confession statement under Ex.P3 to Ex.P6 which are given in the presence of P.W.8 to P.W.12 which has let to the recovery of the stolen article from the village pond by P.W.6 fisherman, the courts below have come to the conclusion that they have committed the offence under Sections 457 and 380 of I.P.C and accordingly, laid the conviction and hence, this Court is of the considered view that the prosecution has properly proved the charges beyond reasonable doubt and the trial Court has properly laid the conviction for the above said offence accordingly, the conviction levied at these petitioners by both the courts below is well merited and well considered does not warrant by this Court.

19. It appears that the trial Court has awarded sentence for offence under Section 457 of I.P.C of 3 years R.I and fine of Rs.3,000/- in default to undergo 6 months R.I and for the offence under Section 380 r/w 149 sentence to undergo 3 months R.I and and same amount of fine with default clause taking note of the nature and gravity of the offence the trial Court has correctly held that the " sentence has to run separately".



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20. On appeal in Crl.A.No.6 of 2011, it appears that the Additional Sessions Judge without appreciation of above facts and also without considering the nature and gravity of the offence has modified the "sentence to run the concurrently" for said of the period.

21. In view of the discussion in the presiding paragraphs, the conviction laid by both the Courts below for the offence under Sections 457 (2 counts) and 380 (2 counts) of I.P.C., are hereby confirmed.

22. As stated supra, the trial Court has ordered sentence of 3 years of R.I with fine for offence under Section 457 and another 3 years R.I for offence under Section 380 I.P.C and further order of run the terms of punishment separately. However, it appears that the Additional Sessions Judge, Karaikal has modified that into the sentence period to run concurrently.

23. In this regard, the Apex Court in the decision reported in (2008) 7 SCC 550, (State of Punjab Vs.Prem Sagar and others) wherein as it is follows:-

Whether the Court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role.

24. On the facts and circumstances of the case and taking into entirety of the circumstances and ratio laid down by the Apex Court in the above decision.

It is stated that the law regulates social interests, arbitrates conflicting claims and demands. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted



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of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from Sub section (2) 235, Sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the Court in awarding the sentence must take into consideration a charge number of relevant factors; sociological back drop of the accused being one of them. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

25. Thus, taking into entirety of the offence committed and also the consciousness of the society and its found that on the criminal justice delivery system, this Court is of the considered view that the order of modification by the lower Appellate Court is not sustainable and accordingly the same is set aside and sentence awarded by the trial Court hereby is restored and hence, the sentence awarded in the trial Court shall order to run separately. The trial Court is directed to secure the custody of the appellants and send them to jail to undergo the remaining portion of the sentence imposed.

26. With these modifications, this Criminal Revision Petition is dismissed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Additional Sessions Judge,
Karaikal



2. The Judicial Magistrate No.II, Karaikal

3. The Chief Judicial Magistrate,
Puducherry

4. The Superintendent,
Central Prison,
Kulapet, Puducherry

5. The Station House Officer,
T.R.Pattinam Police Station,
T.R.Pattinam, Karaikal,
Crime No.201 of 2007

6. The Public Prosecutor,
High Court, Madras.

CRL.RC. No.850 of 2011

EV(CO)
CS/29/01/18