

Bail Slip

The Appellant/Accused No.2,namely Arafath aged 27 years S/o.Assu was directed to be released on bail as per order of this court dated 05.01.2012 in MP.NO.1/12 IN CRL RC.NO.18/2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :21.02.2019

Pronounced on :28.02.2019

Coram:

The Honourable Dr.Justice G.Jayachandran
Criminal Revision Case No.18 of 2012

Arafath

...Petitioner

/versus/

State:Represented by
State House Officer,
Mahe Police Station,
Crime No.53 of 2009
Puducherry State.

.. Respondent

Criminal Revision Case has been filed under Section 397 and 401 of the Code of Criminal Procedure against the judgment of the learned II Additional Sessions Judge, Pondicherry in Crl.A.No.35 of 2010 dated 15.09.2011 confirming the sentence of (1) 6 months Rigorous Imprisonment and a fine of Rs.500/- with a default sentence of one week Simple Imprisonment for the offence under Section 457 of the Indian Penal Code and (2) 6 months Rigorous Imprisonment and a fine of Rs.500/- with a default sentence of one week Simple Imprisonment and a fine of Rs.500/- with a default Sentence of one week Simple Imprisonment for the offence under Section 380 of the Indian Penal Code imposed by the learned Judicial Magistrate, Mahe in C.C.No.26 of 2010 dated 20.10.2010.

For Petitioner :Mr.S.Yogaraja Sekar for
Mr.R.John Sathyan
For Respondent :Mr.Balamurugan, APP(Pondy.)

O R D E R

The revision petitioner herein is the second accused in C.C.No.26 of 2010 on the file of the Judicial Magistrate, Mahe.

2. This revision petition is filed by the revision petitioner, aggrieved by the judgment passed by

the trial Court convicting him for the offence under Sections 457 and 380 of IPC. The same, on appeal, was confirmed by the II Additional Sessions Judge at Pondicherry.

3.The brief facts of the prosecution case are as follows:-

During the intervening night of 23.06.2010 and 24.06.2010, the office of Venugopala Temple, Anavathukkal, Mahe was broke open. One iBell DVD Player worth of Rs.1,450/- and cash of Rs.450/- were stolen. On the next day i.e on 24.06.2010 at 09.30 a.m, the Secretary of the Temple noticed about the burglary and lodged a complaint before the respondent police. The case was registered in Crime No. 58 of 2010 under Sections 457 and 380 of IPC. .

4. In the course of investigation, the Sub Inspector of Police received a report from Kannur Town Police Station that three persons namely, K.A.Niyasudeen, Riyas @ Kuyyali Riyas and Arafath were arrested in Crime No.697 of 2010 and they have confessed about their involvement in the case under the investigation by Mahe Police regarding theft in Venugopala Temple. Since these three persons were already arrested and were under the judicial custody, formal arrest was effected. On completion of investigation, final report was filed against them for the offence under Sections 457, 380 of IPC r/w 34 of IPC.

5. To prove the charges, the respondent-police have examined 6 witnesses and marked 7 exhibits. The accused persons have not chosen to examine any witness. When they were questioned about the incriminating circumstance against them in the evidence of prosecution, they denied their complicity. The trial Court, after appreciating the evidence of prosecution held that the complaint[Ex.P1] given by the Secretary of the temple PW-1 speaks about the fact that the DVD player kept under the table found missing and cash of Rs.450/- kept in the table drawer were found missing on 24.06.2010. The evidence of PW-1[Bhaskaran] is corroborated by the evidence of PW-2 [Santha], who is the attender of the temple who was present along with PW-1 when the temple office was opened. The stolen DVD player [M.O.3] was recovered from A2/revision petitioner based on his confession statement to the police in the presence of PW-3[A.K.Mohandas]. Through the evidence of PW-3, the prosecution has proved, the recovery of stolen article from the possession of A2 leading to the presumption that

A2 is the thief under Section 114(A) of the Indian Evidence Act.

6. A2 was sentenced to undergo six months imprisonment for the offence under Section 457 of IPC and to pay a fine of Rs.500/- in default to undergo one week Simple Imprisonment and sentenced to undergo six months Rigorous Imprisonment for the offence under Section 380 of IPC and to pay a fine of Rs.500/- in default to undergo one week Simple Imprisonment. The period of sentence was ordered to run concurrently and the period of sentence already undergone by the accused was ordered to be set off. As far as the charges against A1 and A3 is concerned, Since there was no other incriminating material against them except the confession statement of A2 co-accused, which is only corroborative piece of evidence and not substantive piece of evidence. The trial Court acquitted them for want of evidence.

7. Aggrieved by the judgment of the learned Judicial Magistrate, this revision petitioner has preferred the appeal before the II Additional Sessions Judge, Pondicherry in Criminal Appeal No.35 of 2010. Before the lower appellate Court the accused contented that the trial Court failed to note that there is no eye witness to the occurrence and evidence of PW-3 regarding confession and recovery is highly unbelievable. Same witness for confession as well as recovery is doubtful. Mere recovery of corpus delicti, based on the confession of a person in the custody of the police is unsafe to rely and convict. The lower appellate Court however, held that on perusal of the records, he finds that the trial Court has properly appreciated the evidence and arrived at the correct conclusion regarding the guilt of these accused and confirmed the judgment passed by the learned Judicial Magistrate, Mahe in C.C.No.26 of 2010 dated 06.12.2010.

8. Before this Court, under the revisional jurisdiction, the convicted second accused is questioning the manner in which the Courts below has appreciated the evidence. Pointing out that PW-1 Secretary of the temple and PW-2 is the Temple Attender have not spoken about the involvement of the accused. So, he pleads that the benefit of doubt should have been extended to this revision petitioner also as it was extended to the other two accused persons. Doubting the confession statement and the manner in which M.O.3 was recovered based on the confession statement, the learned counsel appearing for the revision petitioner would submit that the failure of the defacto complainant to prove the ownership of the DVD

player recovered from the possession of the petitioner should have weighed the mind of the Courts below. The learned counsel would also question the trial Court decision to invoke the presumption under Section 114(A) of the Indian Evidence Act.

9. Heard both sides and perused the records.

10. It is the case of robbery during night. DVD player and cash have been stolen, from the locked premises. The crime has come to light on the next day when PW-1 came to the temple office of open it. Therefore, expecting some eye witness to the act of burglary during the night is preposterous. Just because PW-1 and PW-2 were not witnessed to the occurrence, their evidence regarding the theft which they have noticed on the next day when they came to the office to open it can not be brushed aside.

11. Section 457 of the Indian Penal Code reads as under:-

"457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment:-Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years."

12. The proven facts through the prosecution witnesses clearly indicates that the temple office was broke open on the intervening night of 23.06.2010 and 24.06.2010. The DVD player and cash of Rs.450/- were found missing on the next day.

13. Section 380 of the Indian Penal Code reads as under:-

"380. Theft in dwelling house, etc. --- Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either

description for a term which may extend to seven years, and shall also be liable to fine."

14. The stolen DVD player has been recovered from this revision petitioner, based on his confession statement. PW-3 an independent witness has deposed about the recovery. There is no reason to doubt his evidence nor doubt the voluntariness of the confession statement just because the accused was under judicial custody. Under Section 114(A) of the Indian Evidence Act any person, who found in possession of stolen property, is bound to explain satisfactorily about his possession. If he fails to explain the possession, then it has to be presumed that he is the person, who has stolen the property or the person who has received the stolen property with knowledge. Therefore, the finding of the Courts below holding the accused guilty and convicting him for the offence under Sections 457 and 380 of IPC based on proven facts and evidence has to uphold. There is no illegality in the finding of the Courts below which warrants inference.

15. Hence, this Criminal Revision Case is dismissed. The judgment of conviction and sentence passed by the trial Court in C.C.No.26 of 2010 dated 20.10.2010 is confirmed. The respondent police is directed to secure the accused to undergo the remaining period of sentence. The period of sentence already undergone by the accused is ordered to be set off. Both the sentence is ordered to run concurrently. Bail bond if any executed by the accused shall be cancelled.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional Sessions Judge Pondicherry.
2. The Judicial Magistrate, Mahe.
3. The Chief Judicial Magistrate, Pudhucherry.
4. The Superintendent, Central Prison, Kannur.
5. The Station House Officer, Mahe Police Station, Pudhucherry
6. Rep. By superintendent of Police, Mylapore, Chennai.
7. The Public Prosecutor, High Court, Madras.

CrI.R.C.No.18 of 2012

A.SK(15/04/2019)