

Bail Slip

The Appellant/Accused, 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.19/2012 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.19 of 2012

Arafath

.. Petitioner

/versus/

State: Represented by
State House Officer,
Palloor Police Station,
Crime No.39 of 2008
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.4 of 2011 dated 15.09.2011 confirming the sentence of (1) 1 year Rigorous Imprisonment for the offence under Section 457 of the Indian Penal Code, and (2) 1 year Rigorous Imprisonment for the offence under Section 379 of the Indian Penal Code imposed by the learned Judicial Magistrate, Mahe in C.C.No.25 of 2010, dated 06.12.2010.

For Petitioner : Mr. S. Yogaraja Sekar for
Mr. R. John Sathyan

For Respondent : Mr. Balamurugan, APP (Pondy.)

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O R D E R

The revision petitioner herein was tried before the Judicial Magistrate in C.C.No.25 of 2010 for the offence under Sections 356, 379 of IPC.

2. The allegation against the petitioner was that on 23.04.2008 at about 11.25 hours the accused came in a motor cycle and snatched the five sovereign gold thali chain from Rejila in front of Prasanthi Nilayam, Palloor. The father of the victim lodged a complaint to the respondent police regarding the incident and the same was

registered in Crime No.39 of 2008. The Sub Inspector of Police attached to the respondent station took up the investigation and formally arrested the accused on 09.07.2008, who was in judicial custody in connection with a different case. On completion of investigation, final report has been filed against this accused for the offence under Sections 356 and 379 of IPC.

3. To prove the charges, the prosecution has examined 11 witnesses as PW-1 to PW-11 and marked 6 exhibits as Exs.P1 to P6. The trial Court, after considering the evidence of PW-2, the victim of the crime who has spoken about the occurrence and identification of the accused as well as the gold chain lost at the hands of the accused, coupled with the factum of recovery of the stolen article from PW-6 the purchaser of the stolen property from the accused, held that the prosecution has proved the charges against the accused.

4. The aggrieved accused has preferred an appeal before the II Additional Sessions Judge, Pondicherry. The lower appellate Court re-appreciated the evidence and found nothing improper and illegal in the judgment of the trial Court to interfere. Hence, confirmed the conviction and sentence of one year Rigorous Imprisonment for the offence under Section 356 of IPC and one year Rigorous Imprisonment for the offence under Section 379 of IPC. Both the sentence were ordered to run concurrently. The period of sentence already undergone by the accused was ordered to be set off. The present revision petition has been preferred by the accused, aggrieved by the concurrent finding of the Courts below.

5. It is contended that the First Information Report given by the father of the victim is a belated complaint. No explanation for the cause of the delay has been put forth by the prosecution. In the complaint (Ex.P1), the description of the chain lost by PW-2 is not mentioned. The identification of the accused was not ascertained by the prosecution by conducting identification parade test. Therefore, the finding of the Courts below that PW-2 has identified the jewel as well the thief in the Court is sufficient proof of identity of the accused is against all probabilities. The accused being a total stranger, omission to conduct the identification parade immediately after the arrest of the accused is fatal to the prosecution. Whereas, the Courts below relying upon the evidence of PW-6, who is a receiver of the stolen goods, has held the accused guilty based on presumption.

6. On perusal of the records of the lower appellate Court, in the light of the grounds raised in the revision petition, this Court finds that on 23.04.2008 while PW-2 was walking on the road near Prasanthi Nilayam, Palloor, her five sovereign gold thali chain has been snatched by a person coming in a motor cycle. Immediately, her father PW-1 has given the complaint to the police and the complaint was marked as Ex.P1. The police has visited the scene of occurrence and had prepared mahazar (Ex.P2). Later, this revision petitioner was arrested in some other crime. Based on his confession statement, the stolen property has been recovered in the presence of PW-3. The seizure mahazar was marked as Ex.P6. Since the accused sold the chain, the person who has purchased the property and from whom the chain was recovered, has also been examined by the prosecution as PW-6. A complaint about a cognizable offence can be given by any person either orally or in writing. While so, complaint by the father of the victim cannot be doubted or rejected.

7. No doubt, the accused and the victim were strangers. The prosecution has not arranged for identification parade immediately after the arrest of the accused. If there is no other corroborative evidence, the identification of the perpetrated of the crime could have been doubtful. But, in this case, apart from the identification of the stolen articles and the person, who has stolen the article, the fact that the stolen article was recovered based on the information given by the accused gains significance. PW-6 has deposed that M.O.1 chain was sold by the accused. PW-2 has identified the M.O.1 the chain which was snatched from her on 23.04.2008. It is not mandatory that always the prosecution should arrange for identification parade. Identification parades are conducted only for the investigation agency to ascertain whether they are proceeding on the right direction during their investigation. When the confession statement of the accused has led to recovery of the stolen property and the identification of the person, who has committed the crime, could be ascertained through the other evidence, identification parade need not be conducted, since it will a superfluous exercise for the investigation agency. Therefore, the contentions raised by the learned counsel appearing for the revision petitioner are not sustainable and they are not sufficient to hold that the finding of the Courts below are improper or illegal to interfere.

8. Considering the nature of the offence and the evidence available, this Court finds that the judgment of the trial Court which was upheld by the lower appellate Court has to be confirmed.

9. Accordingly, this Criminal Revision Case is dismissed. The judgment of conviction and sentence passed by the trial Court in C.C.No.25 of 2010 dated 06.12.2010 is confirmed. The period of sentence already undergone by the accused is ordered to be set off. Both the sentence shall run concurrently. The respondent-police is directed to secure the accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS viii)

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Sub Assistant Registrar

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To

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

CrI.R.C.No.19 of 2012

A.SK (15/04/2019)

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