

BAIL SLIP

The Petitioners/Accused 1 & 2 namely 1.Krishnamoorthy S/o.Kittyappa, and 2.A.Muniraj S/o.Abbiannan, were directed to be released on bail dated 28.03.2012 made in Crl.MP.No.1, 1/2012, Crl.R.C.No.361 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.361 OF 2012

1. Krishnamoorthy

2. A.Muniraj

...Petitioners/Accused 1 & 2

-Vs-

State by the Inspector of Police,
Shoolagiri Police Station,
Krishnagiri District.
(Cr.No.262 of 2006)

... Respondent

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C., against the judgment of the learned Additional Sessions Judge, Krishnagiri in C.A.No.19 of 2008, dated 21.03.2011, in C.C.No.86 of 2006 dated 27.02.2008 on the file of the learned Judicial Magistrate-I, Hosur.

For Petitioners : Name printed - No appearance

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

ORDER

This Criminal Revision has been filed against the judgment of the learned Additional Sessions Judge, Krishnagiri in C.A.No.19 of 2008, dated 21.03.2011, by confirming the conviction and sentence in C.C.No.86 of 2006, dated 27.02.2008, by the learned Judicial Magistrate-I, Hosur.

2. Based on the complaint given by one Gopalappa/P.W.1, the respondent police registered a case against the revision

petitioners in Crime No.262 of 2006 for the offences under Section 454 and 380 IPC. After investigation, the respondent police filed charge sheet as against the revision petitioners for the offences under Section 454 and 380 of IPC before the learned Judicial Magistrate-I, Hosur and the same was taken on file in C.C.No.68 of 2006. After full-fledged trial, the learned Judicial Magistrate found the accused 1 and 2 guilty for the offences under Section 454 and 380 IPC and convicted and sentenced them to undergo one year rigorous imprisonment and to pay a fine of Rs.500/- each, in default, to undergo one month rigorous imprisonment for the offence under Section 454 IPC; and further, sentenced them to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/- each, in default, to undergo one month rigorous imprisonment.

3. Challenging the order passed by the learned Judicial Magistrate-1, Hosur, dated 27.02.2008, in C.C.No.86 of 2006, the petitioners have filed appeal before the learned Principal District Judge, Krishnagiri and the same was taken on file in C.A.No.19 of 2008. The learned District Judge, Krishnagiri, after hearing the arguments on either side, dismissed the appeal and confirmed the order of the learned Magistrate. Challenging the judgment in C.A.No.19 of 2008, dated 21.03.2011, the revision petitioners have filed the present revision before this Court.

4. When the revision was taken up for hearing on 18.06.2019, there was no representation on behalf of the revision petitioners. Therefore, Registry was directed to remove the name of the counsel for the petitioners and to print the name of the petitioners in the cause list and the revision was posted on 05.07.2019. On 05.07.2019, there was no representation on behalf of the petitioners and posted on 09.07.2019. Even today, when the revision is taken up for hearing, none appeared on behalf of the revision petitioners. Since the revision is pending from 2012, this Court is inclined to take up the revision for disposal.

5. Heard the learned Government Advocate (Crl. side) and perused the materials available on record.

6. The case of the prosecution is that on 26.07.2006, the revision petitioners have trespassed into the house of the defacto complainant by forcibly removing the door and opened the bureau and took away the jewels weighing about two sovereigns and Rs.1,00,000/- by way of cash.

7. Admittedly, in this case, the respondent police registered the case against the revision petitioners for the offences under Section 454 and 380 IPC stating that the revision

petitioners trespassed into the house of the defacto complainant. During the night hours, broke open the safety locker and taken the jewels weighing about two sovereigns and Rs.1,00,000/- by way of cash. In order to prove the prosecution case, on the side of the prosecution, the respondent police has examined as many as 11 witnesses viz., P.W.1 to P.W.9 and marked 10 documents viz., Ex.P1 to Ex.P10.

8. P.W.9 is the Village Administrative Officer. He has stated that the revision petitioners were arrested and given the confession statement voluntarily and the jewels weighing about two sovereigns and Rs.65,000/- were recovered from the revision petitioners. Based on the confession statement and recovery of the jewels and cash, both the learned Magistrate and the lower Appellate Court convicted the revision petitioners.

9. On a careful perusal of the records, there is no eye witnesses in this case. P.W.1 is the defacto complainant. Based on the complaint given by the defacto complainant, the case was registered as against the revision petitioners by the respondent police. Admittedly, P.W.8 is the Police Officer, working in Krishnagiri Police station, took the finger print from the place of occurrence and also taken the finger prints from the said iron bureau and the same were sent to the Forensic Department for getting expert's opinion, after obtaining the finger prints from the revision petitioners. The Court has received the report which was negatived and not tallied with the finger print of the petitioners taken by the P.W.8 in the place of the occurrence and also the said bureau, in which the alleged money and jewels were kept.

10. It is seen from the records that this report has not been marked by the prosecution during the trial before the trial Court as prosecution side documents. The person, who has taken the finger print in the place of occurrence and in the bureau, has been examined as P.W.8 and the documents were marked on the side of the prosecution. During the investigation, P.W.1 was not examined and statement under Section 161 was not recorded. But, the prosecution examined P.W.8 before the trial Court, there is no previous statement to point out contradictions, is fatal to the case of prosecution. As already stated, that there is no eyewitness in this case and both the Courts below based on the arrest, recovery and confession statements convicted the revision petitioner.

11. On a careful reading of the entire evidence a sum of Rs.1,00,000/- alleged to have been taken from the bureau in the house of the PW1/defacto complainant. Whereas the recovery amount of Rs.65,000/- has not been marked before the Court and not identified that the notes were recovered from the revision

petitioners as that of the notes are alleged to have taken from the custody of the defacto complainant.

12. The main defence taken by the revision petitioners are that due to previous enmity with one Gopal/defacto complainant regarding selling of property and sale consideration, after dividing the share, among the brothers, his share came about Rs.1,00,000/- was kept in the bureau. But admittedly, the prosecution has not proved that to whom the land was sold and what was the sale consideration, the brothers of the defacto complainant has not been examined in this case to prove the same. Especially, the finger print taken from the said bureau has not been tallied to that of the finger prints of the revision petitioners. It is not the case of the prosecution that there was no finger prints either in the bureau or in the place of the occurrence. Admittedly, from the evidence of P.W.8, both the finger prints taken from the bureau and from the revision petitioners, were sent to the forensic lab for comparison and the same were not tallied, with each other, which creates a doubt in the prosecution case. If two views are possible, the view which is favourable to the accused, has to be taken into consideration and the benefit of doubt should be extended to the accused and the accused has to be acquitted on the ground of benefit of doubt.

13. The Courts below failed to consider the vital parts that the finger prints collected from the scene of occurrence, especially in the said bureau were sent to the forensic lab for comparison along with the finger prints of the revision petitioners, which was not tallied. Therefore, the prosecution has not found out finger prints taken from the bureau are belongs to whom. In the absence of any proof that the finger prints taken from the bureau is not that of the petitioners, this Court extends the benefit of doubt in favour of the revision petitioners. No doubt the scope of revision is very limited and both the Courts have concurrently given the finding and convicted the revision petitioners. Normally the revisional Court, while exercising the revisional jurisdiction will not interfere with the findings of the appellate Court. Since the appellate Court is a final Court of fact finding, while exercising the revisional jurisdiction, unless there is a perversity in appreciation of the evidence, normally, the revisional Court will not interfere with the finding given by the appellate Court. But in this case, after careful perusal of the evidence, both the Courts below miserably failed to appreciate the evidence in the right perspective and failed to appreciate the evidence that the finger prints taken from the bureau has not been tallied with the finger prints of the revision petitioners and that the investigating officer, during the investigation, has not examined and recorded the statement

under Section 161 Cr.P.C. from the person (P.W.8), who has taken the finger prints from the place of occurrence and also from the bureau. Even the report received from the forensic lab has also not been marked and further the prosecution has not given any explanation as to why they have not marked the documents, which creates suspicious in the mind of this Court and the same has not been duly considered by both the Courts below and convicted the petitioners. In the absence of any eyewitnesses, the prosecution has to prove the case through circumstances evidence. But in this case, the prosecution has failed to establish its case through circumstances evidences. Expert evidence is also not supported the case of the prosecution.

14. While exercising the revisional jurisdiction, this Court finds that there is perversity in appreciation of evidences by both the Courts below. Therefore, this Court is inclined to interfere with the judgment of both the Courts below and set aside the judgment of both the Courts below.

15. In the result, this revision is allowed by setting aside the Judgment of both the Courts below. The petitioners are acquitted from all the charges levelled against them. The trial Court is directed to return the fine amount, if any, paid by the revision petitioners.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate-I, Hosur.
2. The Chief Judicial Magistrate, Dharmapuri @ Krishnagiri
3. The Additional Sessions Judge, Krishnagiri.
4. The Inspector of Police,
Shoolagiri Police Station, Krishnagiri District.
5. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.361 of 2012

SR(CO)
CS/06/02/2020