

BAIL SLIP

That the Appellant/Accused namely Manikandan, S/o.Rasupillai was directed to release on bail as per order of the Court dated 25/06/2012 in CrI.M.P.No.1/2012 in CrI.R.C.No.629/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.629 of 2012

Manikandan

... Petitioner/Appellant/
Accused No.1

Vs.

State rep.by
The Inspector of Police,
D-6, Peelamedu Police Station,
Coimbatore District.
(Crime No.734 of 1999)

... Respondent/Respondent/
Complainant

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to call for the records relating to the Judgment made in CrI.A.No.260 of 2011 dated 30.04.2012 on the file of the learned First Additional District and Sessions Judge at Coimbatore, confirming the Judgment and order of conviction of the Trial Court passed in C.C.No.638 of 2003 dated 12.11.2011 on the file of the learned Judicial Magistrate No.VI at Coimbatore.

For Petitioner : Mr.V.Purushothaman

For Respondent : Mr.R.Shanmuga Rajeswaran
Government Advocate(crl.side)

O R D E R

Heard the learned counsel for the revision petitioner and the learned Government Advocate(crl.side) for the respondent.

2. The case of the prosecution is that on 07.07.1999, when PW.1 returned back from vacation to his house at Murugan colony,

Hudco colony at Door No.9, Coimbatore, he saw the front door of his house broke opened and a different lock has been put on it. When he went to the back yard of his house, he found it was opened. The household articles like Sony colour TV, Philips tape recorder, Radio, Emergency lamp, silver articles and cash of Rs.2000/- were stolen. He went to the police station and reported about the theft. The police received the complaint and registered First Information Report on 11.07.1999. Thereafter, in a connected case at Saravanapatti Police Station, two accused by name Sabastin and Antony were arrested. Based on the confession statement given by them one Krishnan was arrested. Krishnan in his confession statement revealed that the property stolen from the house of PW.1 was shared between himself, Sabastin and Antony. As far as the Sony colour TV and one rose colour silk saree, it was given to Manikandan to conceal it. Later, on their request, Manikandan sold the Sony colour TV to one Jayamurthy and gave sale proceed of Rs.10,500/- out of which Rs.300/- was given to Manikandan as commission. Pursuant to this information, the respondent police arrested Manikandan, who is the petitioner herein and he also substantially confirmed the information given by the other co-accused regarding the theft and disposal of the Sony colour TV. The Sony colour TV was recovered from Jayamurthy under Mahazar [Ex.P2]. Jayamurthy admitted that Manikandan sold the colour TV to him and unaware of the stolen property that he has purchased and on this broad spectrum of facts, the prosecution has filed a final report.

3. The Courts below has accepted the version of the prosecution as far as this petitioner is concerned. It held both the revision petitioner as well as Krishnan guilty of offence under Section 457 and 380 IPC. The Lower Appellate Court found that the role of Krishnan in the house lurking as well as the theft has not been properly proved and acquitted him.

4. The learned counsel for the revision petitioner would submit that as far as Section 457 and 380 IPC are concerned, it will apply only to the person who was involved in house lurking and theft. Even according to the prosecution the overt act against the revision petitioner is that he received the stolen property from Sabastin and Antony. He concealed it in his house, later sold to PW.5 and got a commission of Rs.300/-. While so, the ingredients of Section 457 as well as 380 IPC does not attract for the alleged overt act of the revision petitioner.

5. That apart, the learned counsel would submit that the delay in registering the First Information Report and forwarding the 161 Cr.P.C. statement to the Court causes grave doubt about

the case of the prosecution. This has given room to manipulation. The learned counsel for the revision petitioner would submit that while the complaint Ex.P1 indicates that the stolen property was Sony TV, Jayamurthy [PW.5] in his chief examination said that he has purchased ONIDA TV from this revision petitioner. Later in cross-examination, he admitted that he has not purchased any TV and does not know the make of TV. While the witness for recovery does not corroborate the case of the prosecution, there is no material to implicate the revision petitioner for offence under Section 457 or for 380 IPC for which he was charged found guilty.

6. Per contra, the learned Government Advocate(crl.side) would submit that PW.1 and PW.2 the owners of the TV have identified the TV and the same was recovered from PW.5, which has been identified and spoken by PW.5. Though PW.5 has not properly mentioned the make of the TV in the chief-examination, both the Courts below have taken note of the fact that the incident took place some where in the year 1999 and the witnesses were asked to depose in the year 2006 and therefore, the lapse of memory due to efflux of time being taken note of. Having identified the property by the owner as well as the person who has purchased the property from the accused, the link of passing of the stolen property is clearly established by the prosecution. Hence, the revision petitioner is liable to be convicted under Section 457 and 380 IPC.

Section 457 IPC and 380 IPC which reads as below:

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

457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment- Whoever commits lurking house -trepass 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."

7. The prosecution spoken case the witnesses held to be proved by the Courts below that the theft of articles from the house of PW.1 was done by Antony and Sabastin between sun set

and sun rise by lurking. Krishnan has accompanied them, assisted them, provided facility to move the stolen property in his car. From the confession statement of Krishnan and others, his role in the crime has been seen as a person keeping watch outside the scene of crime, while the other two accused Sabastin and Antony went for house lurking and theft. The Lower Appellate Court has found that this evidence is insufficient to convict the Krishnan and acquitted him. The State has not preferred any appeal against the order of acquittal.

8. As far as the role of Manikandan is concerned, it is from the statement of Krishnan, Manikandan was implicated as a person who received the stolen articles, concealed the same, on the request of the other accused and later sold to PW.5. Therefore, from the evidence of PW.5, who has identified the revision petitioner as a person who has sold the colour TV which was later recovered from him and identified by PW.1 and PW.2 as the TV which was stolen from his house when they were out of station. At the most, this revision petitioner could have been prosecuted for the offence of concealment of stolen property or for receiving stolen property. Unfortunately, he has been charged for house lurking and theft in dwelling house. So, the material collected against the revision petitioner and the charge for which he was tried are not one and the same.

9. However, this Court finds that this revision petitioner had a role in the crime of concealing the stolen property. The proven fact is that M.O.1 TV was stolen from the house of PW.1. The transit has taken place through this revision petitioner. There is no reason to doubt the evidence of PW.5.

10. Section 414 IPC reads as below:

''414.Assisting in concealment of stolen property.-Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both''

11. It is a generic offence under Section 380 IPC. Therefore, though no specific charge has framed against the revision petitioner under Section 420 IPC, this Court modifies the charge against the revision petitioner from Sections 457 IPC and 380 IPC as Section 414 IPC.

12. The learned counsel for the revision petitioner would submit that the revision petitioner was detaining in prison for nearly one month and he has not come any adverse notice after this incident. In the light of the above facts, while pointing out the error in the judgment of the Lower Appellate Court, this Court holds the revision petitioner guilty of offence 414 IPC and sentence him to undergo for a period of 3 months Rigorous Imprisonment.

13. Accordingly, this Criminal Revision Case is partly allowed. The period of sentence already undergone by the accused shall be set off. The second respondent/accused is directed to surrender before the trial Court to undergo the remaining period of sentence imposed by this Court.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

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Sub Assistant Registrar

To

1. The First Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate No.VI, Coimbatore.
3. The Inspector of Police, D-6, Peelamedu Police Station, Coimbatore District.
4. The Section Officer, Criminal Section, High Court, Madras
5. The Public Prosecutor, High Court, Madras.
6. Krishnan, S/o.Lakshmanasamy, 34, F.C.I Colony, Ganapathy, Coimbatore.

+1 cc to Mr.V.Purushothaman, Advocate, S.R.No.35724

Cr1.R.C.No.629 of 2012

RSV(CO)
SSM(30/05/2019)